Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

AARON RAISER,
Petitioner,

v.

DAVID M. KONO ET AL,
Respondents.

October Term, 2007

Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

Petition for Writ of Certiorari

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Questions Presented for Review

1. (a) Whether the Tenth Circuit's holding in dismissing Petitioner's 42 U.S.C. §1983 claims - that a private party only acts under color of state law if they are engaged in a conspiracy with a state official - conflicts with years of established case law from this Court under Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 937 (1982) which holds state action can be present if the private party "has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State."

(b) Whether the Tenth Circuit's dismissal of Petitioner's §1983 claim under this Court's recent standard set forth in *Bell Atlantic Corporation v. William Twombly* 127 S.Ct. 1955 (2007) was incorrect where Petitioner's 63 page Complaint contained detailed allegations to support the 42 U.S.C. §1983 claim, and where each element of §1983 was satisfied by the facts of the Complaint, and supported by *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 937 (1982), where the Tenth Circuit's basis for dismissal was that Petitioner failed to allege a conspiracy, where *Lugar v. Edmondson Oil Co.* only requires that the private party "has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State" and where 10th Cir. case law otherwise holds Petitioner's §1983 claim actionable?

2. (a) Whether the Tenth Circuit holding that a federal court can not issue a writ of mandamus to a state court judges is contradicted by this Court's case law found in *Pulliam v. Allen*, 466 U.S. 522, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984) which states that writs of mandate are permissible to state court judges?

(b) Whether due process of law as embodied in Fed. R. Civ. Proc. 15(a) is violated where the Tenth Circuit disallowed any chance to Petitioner to amend his complaint to change the requested relief from a writ of mandamus to injunctive relief, where the case would have been actionable had injunctive relief been sought, and where the case had been dismissed in the lower court sua sponte without allowing any briefing on the law of fact of the case?

3.Whether the Tenth Circuit's dismissal of Petitioner's 42 U.S.C. §1985 claim was in error where Petitioner satisfied each element of §1985 but where the Tenth Circuit held that because the conspiracy utilized the state judicial process, though unlawfully, it was in-actionable under §1985, where the violators unlawfully utilized Utah Rule of Professional Conduct 3.3(d) to obtain an arrest warrant for Petitioner and using that threat of certain arrest and physical incarceration had he – a party and witness in his court proceedings – entered the state, to obtain witness testimony in his court cases, and to attend his hearings, which hindered him in his court cases and obstructed the due administration of law?

4. Whether dismissal of Petitioner's RICO claim was in error where Petitioner satisfied each element of a RICO claim, yet the Tenth Circuit held it in-actionable because the violator utilized the state judicial process to bring about the RICO violation, unlawfully utilizing Utah Rule of Professional Conduct 3.3(d) to obtain an arrest warrant for Petitioner – a party and witness in his court proceedings - to prevent him from entering the state, to obtain witness testimony in his court cases, and to attend his hearings, which hindered him in his court cases and obstructed the due administration of law?

5. Whether the language and intent of Congress in enacting 28 U.S.C §455 requires that the actual Judge or Magistrate being asked to recuse themself to rule on the motion where the language of §455 uses the reflexive language "disqualify himself" from any proceeding where his impartiality could reasonably be questioned, where the magistrate or judge can only disqualify themselves if they review it themselves?

6. (a) Whether due process of law requires a Federal Court of Appeals – which raises Standing for the first time on Appeal sua sponte – to allow the party adversely affected an opportunity to show they in fact have standing, where the District Court denied briefing in the case and where as a result Petitioner could not breif the standing issue or amend the complaint to show he in fact had Standing in the District Court, where Standing was found lacking because the Tenth Circuit assumed that Petitioner would not benefit from the releif sought, where injury-in-fact and the existance of unconstitutional conduct was not in dispute?

(b) Whether Standing can exist to redress a Separation of Church / State violation in Utah, where a Separation of Church / State violation is in fact found to exist, where injury in fact is found to exist resulting from that violation, but where because the time required to correct the violation naturally would take so much time that the person affected by the violation could not benefit from that remedy, making it impossible to redress that Separation of Church / State violation?

7. Whether due process of law was denied when the Tenth Circuit denied Petitioner any chance to file a reply brief on Appeal to BYU's brief, where the reply brief could have pointed out and corrected the many factual and legal errors which Tenth Circuit took as correct and relied on to uphold dismissal, where the factual contentions had no support in the lower court?

8. Whether oral argument in the Tenth Circuit would have aided due process of law where opportunity for oral argument was denied and where the Tenth Circuit set aside the legal basis for dismissal in the lower court, and decided the basis for dismissal de novo?

Parties to the Proceedings

DAVID M. KONO;
DANIEL L. STEELE;
FRED HOWARD, official capacity;
BENNETT TUELLER JOHNSON & DEERE;
BRIGHAM YOUNG UNIVERSITY;
JON HUNTSMAN, official capacity.

Corporate Disclosure Statement:

Petitioner is not filing for or on behalf of a Corporation.

TABLE OF CONTENTS

Questions Presented for Review iii

Table of Contents viii

Table of Citations x

Opinions Below 1

Jurisdictional Statement 1

Constitutional Provisions, Statutes 1

Statement of the Case 1

Argument - Reasons for Granting the Writ 11

I. A. The Tenth Circuit's holding that a private party only acts under color of state law if they are engaged in a conspiracy with a state official conflicts with years of established case law from this Court under *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 937 (1982) 11

B. The Tenth Circuit's dismissal of Petitioner's 1983 claim under this Court's recent standard set forth in *Bell Atlantic Corporation v. William Twombly* 127 S.Ct. 1955 (2007) was incorrect where Petitioner's 63 page Complaint contained detailed allegations to support the 1983 claim and the only infirmity was the Tenth Circuit's misunderstanding that a private party is only a a state actor if acting in a conspiracy with a state official 17

II. A. Due Process of Law is Violated where a trivial Amendment of the Complaint would cure an alleged deficiency. 18

B. The Tenth Circuit holding that a federal court can not issue a writ of mandamus to a state court judges is contradicted by this Court's case law 19

III. 28 U.S.C 455 Implicitly Mandates that the actual Judge or Magistrate must rule on a motion for their recusal 20

IV. A. An Opportunity to Show the Standing should have been allowed where no Opportunity was allowed to brief the matter or amend the complaint to show standing was permitted in the lower court. 23

B. Standing can exist to redress a Separation of Church / State violation in Utah, where a Separation of Church / State violation is in fact found to exist, where injury in fact is found to exist resulting from that violation, but where because the time required to correct the violation naturally would take so much time that the person affected by the violation could not benefit from that remedy, making it impossible to redress that Separation of Church / State violation 25

V. The Tenth Circuit Circuit's dismissal of the 1985 claim ignores the plain language of 1985; the Facts of the Complaint fully support a 1985 Claim 29

VI. Each Element for Claim under RICO was satisfied in the case at bar 32

VII. Due Process of Law requires a Reply Brief, Oral Argument Where No Briefing was permitted in the District Court and the Court of Appeals Fashioned new reasons for dismissal for the first time on appeal 34

Conclusion & Relief Sought 34

TABLE OF CITIATIONS

Cases

Allen v. Wright, 468 U. S. 737, 751 (1984) 27

Ballard v. Wall, 413 F.3d 510 (5th Cir. 2005) . 15

Bell Atlantic Corporation v. William Twombly 127 S.Ct. 1955 (2007) 17

City of Los Angeles v. Lyons, 461 U.S. 95 (1983) 24

Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922 (1982) 11,12

Murphy v. Hunt, 455 U.S. 478, 482 (1982) 24 27

Pulliam v. Allen, 466 U.S. 522 (1984) 19,20

Snell v. Tunnell, 920 F.2d 673 (1990) 13

Constitutional Provisions

U.S. Constitution Amend. I .....App J.23-25

U.S. Constitution Amend. V ..... App J. 11-19,23-34

Rules

Fed. R. Civ. Proc. 15(a) ..... App J , 18
Utah Rule of Professional Conduct 3.3(d) App J,11-24

Statutes

18 U.S.C. § 1503 ..... App J, 32
28 U.S.C. § 455 ..... App J, 20
42 U.S.C. § 1983..... App J,11-19
42 U.S.C. § 1985..... App J, 25

APPENDIX

Appendix A - United States Court of Appeals for the Tenth Circuit Order affirming Dismissal.

Appendix B – Order on Rehearing

Appendix C – Order Dismissing Case – United States Federal Court District of Utah.

Appendix D - Report & Recommendation Dismissing Case – United States Federal Court District of Utah (Excerpts pertinent to case - to save space / cost etc.)

Appendix E – Docket U.S. Court of Appeals for the Tenth Circuit

Appendix F – Petitioner's Amended Complaint (AC)

Appendix G – Utah District Court Order Deny Removal – Finding violation of 28 U.S.C. § 1446(a) by BYU

Appendix H – Petition for Rehearing in the Tenth Circuit, United States Federal Court

Appendix I – Opening Brief – Tenth Circuit (Excerpts pertinent to case - to save space / cost etc.)

Appendix J - – Full Citation to Authorities

OPINIONS BELOW

On July 5, 2007 the District Court entered an Order Dismissing the Case. (Appendix A).

On August 6, 2007 the Court of Appeal for the Tenth Circuit entered an Order denying Rehearing. (Appendix B).

JURISDICTIONAL STATEMENT

The date the Order and Judgment was entered by the Court of Appeals for he Tenth Circuit was July 5, 2007.

A petition for rehearing was denied on August 6, 2007.

On 24 October, 2007 a 60 day extension of time was permitted to file this Petition by this Court. See 07A350 in this Court's docket.

This Court's jurisdiction to review, on a writ of certiorari, the decision of the Tenth Circuit U.S. Court of Appeal is conferred by 28 U.S.C. § 1254.

A Petition for Writ of Mandamus has also been submitted to this Court on or about 23 December, 2007 which would affect the need for this Petition.

STATEMENT OF THE CASE

The judiciary of the state of Utah over the years has been systematically filled with LDS (The Church of Jesus Christ of Latter-day Saints) judges due to the LDS church being in the majority politically. See *Amended Complaint* (AC) ¶ 180 (The *Amended Complaint* is found attached herein as Appendix F).

The religious composition in the state of Utah is approximately 50% LDS. Id. Yet of the 12 judges serving in the state judicial district of Utah County where Petitioner has litigated state cases against BYU, an LDS church institution, each (100%) of those 12 are LDS. AC ¶ 169.

Of the 7 members on the Utah Court of Appeals, all (100%) 7 are LDS. AC ¶¶ 148. The LDS church however has very strong religious beliefs concerning the truthfulness of its religion. Its beliefs are that it is the Lord's only true church, guided and directed by the Lord himself. AC ¶¶ 182-184. LDS faithful are required to accept and stake their entire lives on that premise. *FN1

FN1 Petitioner is not challenging beliefs or their correctness. These are pointed out as they are material to the outcome of the case.

Important for this Petition, LDS faithful must also take a religious oath in their temples that they shall defend and promote the LDS church. AC ¶¶ 185-193. BYU, a LDS religious institution, is taught as church doctrine

to be the Lord' s University. AC ¶ 202.

These beliefs create a conflict for the LDS judges when either the LDS church or one of its affiliates such as BYU is a litigant to a court case. AC ¶ 215. Petitioner has been injured as the state judges hearing his cases have been inordinately biased in favor of BYU based on their religious affiliation. AC ¶¶ 195-200.

For example, in state case 020403619 BYU removed a state case to federal court where no federal cause of action existed. That wrongful use of the removal procedure caused an entire 1 year delay in the state case as it was not remanded to state court until 1 year later. This was of no fault of the Petitioner as he filed the proper motion to remand in federal court right after removal was denied about 2 weeks after it was removed, Petitioner even calling the federal court chief judge's chambers assigned to hear the case repeatedly to remand it, but the chief failed, for no explained reason, to remand for 1 year. AC ¶¶ 19-46.

Upon remand, the state court judge, however improper, used his discretion to deny any further amendment to the complaint because after 1 year amendment would not be allowed which caused the case to be dismissed. Petitioner could not amend the complaint earlier due to the case being stayed in federal court per the improper removal. Further, a delay in obtaining critical witness testimony was denied, where witnesses either forget, or move etc. making prosecution of the case difficult. AC ¶¶ 19-46.

The the federal judge ruling against removal stated in

the Order denying removal that BYU's removal violated 28 U.S.C. §1446 because no federal cause of action was present in the state court case. See District Court Order attached as Appendix C.

Petitioner considered the removal a violation of 28 U.S.C. §1446 and was injured by a one year delay in the state case so Petitioner filed a motion for sanctions in state court. Instead of imposing sanction or so much as a reprimand of BYU, the state judge fined Petitioner $2751 for filing the motions saying it was frivolous . Thus BYU violated the federal removal procedure, caused a 1 year delay in the state court case, allowing them to win that case, the federal courts held BYU violated 28 U.S.C. §1446, yet the state court judge held BYU violated no rules and sanctioned Petitioner for filing a motion to redress the BYU misconduct. AC ¶¶ 19-46.

BYU then later found out at a federal hearing that Petitioner, a resident of California, was homeless and barely had enough money to survive from day 1 to day and could not travel to Utah for discovery in that case. AC ¶¶ 55-57. With that information BYU then applied, in an ex parte proceeding to a state court judge, for an Order requiring Petitioner to travel from California to Utah to attend a state court hearing, and BYU prepared an Order for the Judge to sign that stated that if Petitioner failed to attend the hearing, he would face arrest. AC ¶¶ 58-59. BYU purposefully withheld from the judge in the ex parte proceeding that Petitioner was unable to travel to Utah for the hearing and did so with the intent and purpose of interfering with Petitioners ability to travel to Utah and attend his court hearing,

obtain witness testimony such as depositions against BYU. AC ¶¶ 83-85.

Utah Rules of Professional Conduct require an attorney in an ex parte proceeding to inform the judge of all material facts which are needed for the judge to make an informed decision. AC ¶ 72. It goes without saying that the inability of Petitioner to attend that hearing was material to the judge making a proper determination in the ex parte proceeding as it guaranteed BYU their arrest warrant for their adversary in their court proceedings.

BYU also mislead the state trial judge and cited as authority Utah R. Civ. Proc. 69 in the motion leading to the arrest, where Utah R. Civ. Proc. 69 does not exist. AC ¶¶ 70—71. In the ex parte proceeding BYU also had an affirmative duty to inform the trial judge that Petitioner did not have the means to attend the hearing. AC ¶¶ 72.

Petitioner did not attend due to his poverty and the hearing and the arrest warrant was issued. AC ¶¶ 79. With that threat of arrest, BYU attempted to coerce Petitioner into dropping his cases against BYU in exchange for them dropping the arrest warrant which warrant threatened Petitioner with the use of physical force. AC ¶¶ 73-74.

With that arrest warrant, Petitioner was hindered, and otherwise unable to travel to Utah to (1) attend any legal proceedings in which he was involved, (2) obtain witness information (3) give testimony in any legal proceedings in Utah or (4) to appear as a witness in

federal and state proceedings or hearings or obtain other evidence needed for those proceedings. AC ¶ 85.

Prior to obtaining the arrest warrant in violation of Utah Rules of Professional Conduct 3.3 the defendants in the case Kono, Steele and BYU conspired together to utilize Utah Rules of Professional Conduct 3.3 to deprive Petitioner of his civil rights, to prevent him from entering Utah to obtain witness testimony, attend court proceedings and to prosecute his cases Against them, and then took acts to further that conspiracy to violate Petitioners rights to access to the federal court system in Utah, to obtain witness testimony, and to give testimony in the federal and state cases against BYU. AC ¶¶ 116, 237. The state court judge was aware that Utah R. Civ. Proc. 69 does not exist and provided no authority for the arrest warrant. AC ¶ 80. The state court judge was also aware that Petitioner was homeless and near penniless. AC ¶¶ 97-99. See also AC ¶ 321. Petitioner has filed many motions to rescind the state arrest warrant order but the state court judge has denied each. AC ¶¶ 105,106.

The state court judge (Defendant Howard) also sanctioned Petitioner when he filed a URCP Rule 11 (which mirrors the FRCP) motion against BYU regarding the unlawful manner BYU obtained the arrest warrant ex parte without telling the judge Petitioner could not financially afford to attend the hearing where BYU was fully aware of that fact, and the natural consequences of that in them getting the arrest warrant for Petitioner. The total monetary sanctions imposed were $4748. AC ¶ 323. The state court judge said the motion was without merit.

The arrest warrant for Petitioner remains in effect. AC ¶ 105. While not specifically mentioned, it would be likely be rescinded upon payment to BYU of the $4748 which might be some time given Petitioner being homeless and under some financial difficulty.

Other instances of procedural and substantive prejudice in favor of BYU by the Utah state courts are also alleged. AC ¶¶ 153-162; 144-147.

With respect to the factual allegations regarding the religious composition of the Utah Judiciary and the resulting injury to Petitioner's ability to get a fair hearing against BYU and due process of law rights, a claim for Separation of Church and State under the First Amendment is claimed. AC at 24-25. The relief sought with respect to Governor Huntsman who is in charge of selecting the judicial nominating members who make binding recommendations for filling state judgeships, is that steps be taken to ensure that the state judiciary more closely reflects the religious composition in Utah. AC at 29.

A claim against Judge Howard is brought regarding the same separation of church state claim along with a § 1983 claims to rescind the arrest warrant and the $4748 sanctions. AC at 28, 29 (Eighth, Ninth Claim). The unlawful arrest warrant also interferes and burdens Petitioner's right to interstate travel as he can no longer travel to or through that state without facing arrest.

The appeal to the Utah Appeals and Supreme Courts to have the arrest warrant and $4748 sanctions rescinded

was denied and a Petition for Writ of Certiorari to the Utah Supreme Court on the matter was denied in 07-442 on Dec. 3, 2007 by this Court, leaving only the federal courts to redress the wrong done to Petitioner on the matter.

Declaratory relief is also sought. Id. (Seventh, Eighth Claim) Because the actions of Defendants Kono, Steele and BYU deprived, obstructed and/or hindered Petitioner to rights to interstate travel, the ability to prosecute and attend his state and federal court cases, obtain evidence, obtain witness testimony, give his testimony in those cases and interfered with Petitioners due process of law rights, and because those actions were done under color of state law, a cause of action under §1983 is alleged, along with a Cause of Action under RICO for interfering with witness and evidence taking in a federal court case, a related claim under §1985 for the conspiracy which preceded, and was part of, the deprivation of those rights and interference with and hindering Petitioner's rights to attend federal court hearings, and his ability to obtain witness and related evidence in federal court cases are alleged. AC at 19-27.

Procedural History

The District Court ordered that no briefing would occur on the Complaint and the case was reviewed by a magistrate and dismissed without any briefing by the parties. The basis for that Order to deny briefing was overturned on Appeal. (See Order, Appendix A at 3-4 FN2)

The magistrate found that the 63 page complaint was not lacking in supporting factual allegations *FN2 per se, however, he did find that the claims were barred by either the Rooker Feldman doctrine and Eleventh Amendment immunity. See Report and Recommendation excerpts attached herewith as Appendix D.

FN2 Some factual error were present which caused him to dismiss claims under Rooker Feldman, which turned out to be incorrect. For example, the magisrate mad the assumption unsupported by anything anywhere that Petitioner's state court cases had completed and his state remedies exhausted at the time the complaint was filed, which was incorrect. See the amended complaint (AC) ¶51.

Petitioner successfully showed on appeal that the the Rooker Feldman doctrine was not a bar to any claim and that Eleventh Amendment Immunity did not apply because Petitioner was seeking prospective, non-monetary relief against Governor Huntsman. See **Opening Brief** of Petitioner in the Tenth Circuit attached as Appendix I.

The Tenth Circuit agreed and in upholding dismissal, never found Rooker Feldman doctrine applicable in the case and likewise never found the Eleventh Amendment immunity a bar to the claim against Governor Huntsman. See Appendix A (entirely omitting the basis for dismissal of the District Court)

Thus, without any briefing in the lower court to develop and refine the facts and law in the case, the

complaint was dismissed on faulty legal grounds. Then the Tenth Circuit, for the first time on appeal, came up with a new basis for dismissal for the 1983, 1985 and RICO claims. This is troubling. The Tenth Circuit did a de Novo adjudication on Appeal and not a de Novo review, and due process of law suffered because the Tenth Circuit made numerous factual error and the facts and law of the case could not be developed.

The Tenth Circuit refused to allow Petitioner a chance to file a Reply Brief on appeal to BYU's brief. That would have been helpful to due process of law in the case because the Tenth Circuit also came up with numerous new facts on appeal having no support in the lower court.

Also, the Tenth Circuit denied Petitioner's request for Oral argument which likewise would have been helpful to a fair outcome in the appeal given that the the basis for dismissal was decided de novo without any chance to developer the facts and law either on appeal or in the trial court and without a chance to address the new factual or legal basis for dismissal which the Tenth Circuit decided determined dismissal.

ARGUMENT
REASONS FOR GRANTING THE WRIT

I.

A.

The Tenth Circuit's holding that a private party only acts under color of state law if they are engaged in a conspiracy with a state official conflicts with years of established case law from this Court under Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 937 (1982)

Appendix A (**Order** affirming Dismissal), the 10th Cir. in upholding dismissal of the 1983 claim states:

> It has been held that "an otherwise private person acts 'under color of' state law when engaged in a conspiracy with state officials to deprive another of federal rights." Tower v. Glover, 467 U.S. 914, 920 (1984). However, "[w]hen a plaintiff in a § 1983 action attempts to assert the necessary 'state action' by implicating state . . . judges in a conspiracy with private defendants, mere conclusory allegations with no supporting factual averments are insufficient; the pleadings must specifically present facts tending to show agreement and concerted action." Sooner Prods. Co. v. McBride, 708 F.2d 510, 512 (10th Cir. 1983).

Order at 7-8.

The *Order* then notes that the "amended complaint contains extensive allegations" but failed to allege a conspiracty/meeting fo the minds between the state court

judge and BYU and its attorneys. See id.

Despite the cited case law, Petitioner never alleged BYU, its attorney's or any other conspired with Judge Howard on anything whatsoever. Neither was such a conspiracy found to exist by the Utah District Court. Petitioner did alleged that the defendant's acted concert with the state judge to bring about the deprivation of civil rights (see AC ¶230) and that their acts were under color of state law (see AC ¶229) and supported those allegations with numerous factual details in the Complaint.

The Tenth Circuit's holding that only if a conspiracy took place ignores established precedent from this Court such as *Lugar v. Edmondson Oil Co.*, Inc., 457 U.S. 922, 937 (1982) which holds that state action can be present if the private party "has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State." Id. At 937. Had the Tenth Circuit applied the appropriate case law which does not limit a private party to be a state actor only if engaged in a conspiracy with a state official, the outcome would have been different.

Because the Tenth Circuit's holding that a private party is a state actor only when engaging in a conspiracy with a state official directly conflicts with this court's precedents in *Lugar*, dismissal must be vacated and an opportunity to determine whether the conduct of BYU and its attorneys, who conspired together and with attorneys for the LDS church to obtain an arrest warrant for Petitioner to keep him from entering Utah to conduct discovery and attend his court hearings in those cases by utilizing violating Rule 3.3(d) of the Utah Rules of

Professional conduct, who then by got the judge to sign an Order requiring Petitioner to travel to Utah to attend a hearing or face arrest, then obtaining that arrest warrant, and at no time informing the judge that Petitioner did not have the ability to travel to the hearing, in violation of Rule 3.3(d) of the Utah Rules of Profession Conduct, makes them state actors for 1983 purposes must be allowed.

1.

Tenth Circuit precedent already dictates that an attorney who violates Rule 3.3(d) of professional conduct and injures another party and violates their civil rights in the process is a state actor and their conduct is actionable under 1983. See *Snell v. Tunnell*, 920 F.2d 673 (1990).

In Snell operators of a foster care home had their children removed from their custody via an ex parte proceeding initiated by a state social worker agency. The state agency violated Oklahoma Rules of Professional Conduct 3.3(d) (which mirror those of Utah) in presenting false information to ...the state court judge in the ex parte proceeding. Further, the Tenth Circuit noted the near certain violation of Oklahoma Rules of Professional Conduct 3.3(d) when the agency failed to make adequate disclosure to the state judge in the ex parte proceeding which generated the Order to remove the foster children from the custody of Mr. & Mrs. Snell. See Snell at 694,

The Tenth Circuit found no bar to the Snell's §1983 suit resulting from the state agency happening to violate a professional rule of conduct in the process of their violation of Mr. & Mrs. Snell's rights.

Where §1983 has been violated, any Rules of Professional Conduct can not save the infringer from accountability for that violation. There is no exception in the language of §1983 that simply because the violator broke a rule of professional conduct in the course of violating 1983, they are somehow relieved from liability. The elements of of 1983 are well established.

Further, under the federal preemption clause, the state rules of professional conduct can not preempt suit under the Constitution.

Also, the outcome in Snell was independent of the validity of invalidity of the state judge Order removing the foster children from custody of Mr. & Mrs. Snell. Snell was dependent on the unlawful means by which the Order was obtained and resulting injury. This is pointed out because the District Court gave great deference to the state order and stating that because it was issued by a judge it somehow removed liability from the defendants. That the Order happened to be issued and signed by a state judge was of no consequence in Snell and can neither be in this appeal.

Thus Tenth Circuit case law, which was raised on Appeal, supports the 1983 claim.

2.

As for the ability to act in concert with a state court judge and be considered la state actor, case law from other Circuits adequately supports that premise. A recent 5th Circuit case similar in many ways to the instant appeal shows that private attorneys who act in concert with a state judge to bring about a deprivation of federal

rights allows the private attorneys to held as state actors for §1983 purposes.

In *Ballard v. Wall*, 413 F.3d 510 (5th Cir. 2005) the defendant Wall obtained a judgment against Ballard in state court. Wall then went to the state court judge and obtained a hearing date for a supplemental proceeding to collect the judgment. Ballard showed up 2 hours late for the hearing and was ordered to jail by the judge until bond had been posted or until the next hearing date. Ballard was then jailed until he posted bond.

Ballard then brought suit against the judge and attorneys for Wall. While the judge received qualified immunity from suit, the 5th Circuit found that the private attorneys could be sued under §1983 because they acted in concert with the judge to bring about a deprivation of Ballard's rights in confining him to jail until he posted bail.

For 1983 purposes, the 5th Circuit analyzed whether the private attorneys were state actors under the Lugar test and found that the private attorneys could be held state actors.

In the instant case, the first factor under Lugar is satisfied because Ballard proffers allegations that "a person for whom the State is responsible" caused the constitutional deprivation. Lugar, 457 U.S. at 937, 102 S.Ct. 2744. Ballard makes various assertions in his complaint which, if taken as true, indicate that Judge Lambert exceeded the scope of her jurisdiction and abused her authority by imprisoning him until he paid his debt. *Ballard* at 519.

In the instant appeal, the state judge is "a person for

whom the State is responsible". Additionally, allegations that the state judge exceeded their authority are present, or can be amended to include those allegations.

For instance the judge relied on Utah R. Civ. Proc. 69 for the authority to hold the hearing and jail Petitioner if he did not appear where that ruled does not exist.

The state judge (Howard) also was aware that BYU violated Utah Rules of Professional Conduct 3.3(d) in an ex parte proceeding and refused to rescind the bench warrant when finding out BYU intentionally withheld that Petitioner could not afford to travel to Utah for the hearing, which guaranteed them the arrest warrant.

Worse yet, the entire basis for the hearing was to enforce a judgment against Petitioner in favor of BYU and that judgment was in every sense of the word ludicrous. Judge Howard awarded BYU $2751 in sanctions after BYU improperly removed their state case to federal court, but the state case had no federal cause of action. That was a direct and open and obvious violation of 28 U.S.C. §1446. Then Petitioner filed the necessary motion to remand almost immediately, but the federal court, without explanation refused to remand it to state court for one year, until from out of nowhere they remanded it. Petitioner complained to Judge Howard about it and defendant Howard imposed the $2751 sanction saying Petitioner's motion for sanctions for improper removal was meritless.

The judge's improper conduct combined with BYU's misrepresentation and deceit on the court that Utah R. Civ. Proc. 69 provided the authority for their hearing motion, and BYU violating Utah Rules of Professional

Conduct 3.3(d) in not informing the judge about Petitioner's inability to travel to Utah for the hearing, which in essence allowed the judge to issue the order which would lead to the deprivation of Petitioner's rights at issue in the case, should suffice to find state action on the part of the private defendants.

As in Ballard the matter of state actorship and liability was decided independent of whether the private actors violated any rules of professional conduct. What mattered was that they violated a federal right and acted under color of state law.

3.

Petitioner's 1983 claim has sufficient legal and factual support and due process of law should allow for it to be remanded for further proceedings.

B.

The Tenth Circuit's dismissal of Petitioner's 1983 claim under this Court's recent standard set forth in *Bell Atlantic Corporation v. William Twombly* 127 S.Ct. 1955 (2007) was incorrect where Petitioner's 63 page Complaint contained detailed allegations to support the 1983 claim and the only infirmity was the Tenth Circuit's misunderstanding that a private party is only a a state actor if acting in a conspiracy with a state official

Likewise, the Tenth Circuit's invocation of this Court's recent ruling in *Twombly* must be overturned or vacated because the Complaint is factually sound and the basis for dismissal was the Tenth Circuit's misunderstanding of when a private party can be considered a state actor

under 1983.

II.

A.

Due Process of Law is Violated where a trivial Amendment of the Complaint would cure an alleged deficiency.

The Tenth Circuit denied one of the claims against Judge Howard of the Utah State Court because Petitioner sought a writ of mandamus against the state court judge and a federal court can not issue such writs. (Tenth Circuit Order at 5 – Appendix A) As shown below that conflicts with this Court's precedents.

However, had Petitioner been allowed to amend the complaint, he could have changed the relief sought from a writ of mandamus to injunctive relief. Thus Petitioner's case could have proceeded if he had been given a chance to simply change the 3 words of the Complaint in the relief sought section.

Opportunity to amend would be appropriate as the complaint was dismissed in the lower court without any chance for briefing, and the Tenth Circuit set aside the basis for dismissal of the lower court and decided the entire matter for the first time on appeal.

Fed. R. Civ. Proc. 15(a) states leave to amend should be liberally given where justice so requires and here due process of law has suffered by the Tenth Circuit denying a chance to amend the complaint to cure the deficiency.

B.
The Tenth Circuit holding that a federal court can not issue a writ of mandamus to a state court judges is contradicted by this Court's case law

With respect to the claim a writ of mandate can not be directed to a state court judge (Opinion at 5), that holding should be re-examined in light of *Pulliam v. Allen*, 466 U.S. 522, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984).

> For the most part, injunctive relief against a judge raises concerns different from those addressed by the protection of judges from damages awards. The limitations already imposed by the requirements for obtaining equitable relief against any defendant a showing of an inadequate remedy at law and of a serious risk of irreparable harm, Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 506-507, 79 S.Ct. 948, 954-955, 3 L.Ed.2d 988 (1959) severely curtail the risk that judges will be harassed and their independence compromised by the threat of having to defend themselves against suits by disgruntled litigants. Similar limitations serve to prevent harassment of judges through use of the writ of mandamus. Because mandamus has "the unfortunate consequence of making the judge a litigant, obliged to obtain personal counsel or to leave his defense to one of the litigants before him," the Court has stressed that it should be "reserved for really extraordinary causes." Ex parte Fahey, 332 U.S. 258, 260, 67 S.Ct. 1558, 1559, 91 L.Ed. 2041 (1947). Occasionally, however, there are "really

> extraordinary causes" and, in such cases, there has been no suggestion that judicial immunity prevents the supervising court from issuing the writ.
>
> See *Pulliam v. Allen*, 466 U.S. 522, 538.

Because this court states that a writ of mandamus can be issued to a state court judge, and because the Tenth Circuit holds that under no circumstance can a writ of mandamus be issued, the Petitioner for Writ of Certiorari should issue.

Further, while a writ of mandamus might have the consequence of the judge obtaining counsel, Petitioner sees little difference whether injunctive relief or mandamus is sought to accomplish the same task, as the judge would still obtain counsel to defend the claim, thus there functionally appears to be no difference between seeking either injunctive relief or mandamus to address the wrong to the Petitioner.

III.

28 U.S.C 455 Implicitly Mandates that the actual Judge or Magistrate must rule on a motion for their recusal

28 U.S.C 455(a) states:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (emphasis added).

In the instant matter, Petitioner filed a motion to recuse

the Magistrate primarily on the grounds that (1) he had entered into a contractual agreement with Brigham Young University, evidence of which was shown to the District court of Utah with a printout from the Brigham Young University showing that he had entered into a contractual agreement with them and (2) that the Magistrate, as part of his religious practices as a member of the LDS church, had attended an LDS temple and "taken an oath to defend church" and they are also obligated to take a proactive role in promoting that church and its interests, and that BYU was an LDS institution. Also, the LDS church was a potential litigant to the case pending discovery.

Only the Magistrate himself would be in the position to understand and gage the effect of his religious convictions and teachings on his ability to make detatched and impartial decisions. To allow another judge who might be completely unfamiliar with the LDS church and its teachings to make that decisions would go against the words and intent of 28 USC 455.

Also, if the Magistrate reviews the motion it avoids evidentiary issues which can be cumbersome for such a motion especially in a case like this where a persons religious beliefs or practices are difficult to prove, are not a matter of public information, and generally persons outside the religion are unaware of those beliefs and practices.

Here the magistrate was in a position where his discretion had major and dispositive impact on the outcome of the case. For example, the magistrate held that although BYU and its attorneys violated Utah Rule of Professional Conduct 3.3(d) in obtaining the arrest

warrant for Petitioner, and although that misconduct satisfied all elements of 42 U.S.C 1983, Petitioner's recourse was with the state bar, and not the federal courts. This in the face of 1983 and nowhere does 1983 care whether the violation came about by a violation of a rule of professional conduct or otherwise. Simply because BYU and its attorneys violated a rule of professional conduct at the same time as violating Petitioner's civil rights, acting in concert with a state court judge can not free them from liability. Yet the magistrate made a very favorable finding for BYU. Another example, the claims under 1983, 1985 and RICO were found in-actionable (incorrectly) under Rooker Feldman because the magistrate made an assumption, unsupported by the complaint, that Petitioner had already exhausted his state court remedies where the complaint (Appendix F Amended Complaint ¶51) stated "The referred to state case has not reached a final adjudication for Rooker-Feldman purposes."

Also, the claim against Governor Huntsman which involve the magistrate's church and its teachings and control of the Utah Judiciary, were found to be in-actionable due to Eleventh Amendment immunity where anyone having taken Constitutional Law, let alone a chief federal magistrate would be perfectly aware that it does not apply were prospective non-monetary relief is sought.

Those findings were critical as had those findings not come about, the case could have been briefed and the law and facts of the case developed, which due process of law requires.

Because the Tenth Circuit's holding that it is permissible

for a judge other than the one being sought to recuse themself and decide whether disqualification is proper, and because 28 U.S.C. 455 specifically states that the judge or magistrate being asked to recuse themself "shall disqualify himself", which can only be done if the judge or magistrate reviews the motion himself, reversal of the Tenth Circuit's holding must be allowed.

IV.

A.

An Opportunity to Show the Standing should have been allowed where no Opportunity was allowed to brief the matter or amend the complaint to show standing was permitted in the lower court

In Utah 12 of 12 judges in the state judicial district where BYU resides are LDS. 7 of 7 of the states Court of Appeals are LDS. The State Supreme Court having discretionary is 80% LDS (4 of 5). In Utah however, the LDS church is only in the slight majority and about 51 % LDS. Petitioner plead, and neither the Federal District Court of Court of Appeals denied that a Separation of Church /State Problem existis in Utah. Neither Court denied that Petitioner was injured by the Separation of Church /State imablance in the state judiciary.

The Disrict Court denied Petitioner's Cause of Action which sought for prospective non-monetary relief in the form of a writ to the Governor to take reasonable steps to remedy the imbalance, on Eleventh Amendment immunity grounds. On Appeal, the Tenth Circuit agreed with Petitioner that the Eleventh Amendment did

not bar the Claim. For the first time on appeal, however, the Tenth Circuit claimed that it was speculative that Petitioner's relief sought would redress his injury, because by the time the remedy was implemented, Petitioner's state court cases would be over with.

The capable-of-repetition doctrine can be invoked in cases where a constitutional deprivation has occurred yet where redress for that deprivation can not be given due to the length of time it takes for the courts to adjudicate a matter. Where there is a "reasonable showing that [a plaintiff] will again be subject to the alleged illegality" the capable-of-repetition doctrine applies. *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983) (citing DeFunis v. Odegaard, 416 U.S. 312, 319 (1974)).

In *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) the Supreme Court stated:

In Weinstein v. Bradford, 423 U.S. 147, 149 (1975) (per curiam), we said that "in the absence of a class action, the `capable of repetition, yet evading review' doctrine was limited to the situation where two elements combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." Citing Elections Bd. v. Socialist Workers Party, 440 U.S. 173, 187 (1979) .

See Murphy at 482 (per curiam).

If the capable of repetition doctrine is not applied,

correction of the church / state entanglement would be beyond the reach of most every citizen of Utah. For example, prior to being injured by an LDS church related institution, seeking to correct the problem would fail due to lack of injury. By the time a person is injured, replacement of an LDS judge does not occur immediately as a judge vacancy must first exist, then the judicial nominating committee (who are appointed by the governor) who makes binding judicial recommendations must find and fill that vacancy. By the time that vacancy though is filled the court case would be completed (or it would be speculative that would redress the injury).

In the present case, opportunity should have been given for Petitioner to make some showing that he in fact had standing. Opportunity to brief the Standing issue was never permitted in the lower court and thus an opportunity to amend the complaint to show standing was not allowed.

A. In the instant case, the Petitioner has had no opportunity to make any showing at all with respect the existence of future lawsuits against an LDS Church related institution. This court's own records should show a history of litigation between the Petitioner and BYU and the LDS church. If the past is any indication of the future there is the likelihood of future litigation between the parties.

Petitioner can show on remand that BYU is in breach of a settlement agreement/contract and that Petitioner can file a state case arising out of that breach, which appears to be continual up until 2010, up until 2016. See Utah Code Ann. § 78-12-23 (2002) (setting statute

of limitations for breach of written contract claims at six years). See also attached Declaration of Petitioner. In the last 5 years there have been 4 new judges assigned to the Fourth District court in Utah where BYU resides. See Declaration of Petitioner.
Thus 8 years should be sufficient for the judicial nominating committee to nominate at least one non-LDS judge to that District. At least then there would be one judge available to hear that case. Thus there is in fact a reasonable likelihood that the relief sought can in fact redress the injury. Importantly, this demonstrates the need for fact finding and that opportunity should be given. This Court should not assume that those facts don't exists without giving some opportunity to present them. Thus remand to the district court would be the best manner to handle the case to allow the facts and the law to be developed. For these reasons, dismissal of the Separation of Church / State claim should be vacated and the capable of repetition doctrine applied to the case.

Petitioner is in a unique position to adjudicate the church / state claim because he has a breach of contract case against BYU which according to the state statute of limitation law can be filed up until 2016. See Declaration of Petitioner, submitted to the Court of Appeal shown with Appendix H attached herein, Petitioner showed in the Tenth Circuit that the state judicial district where BYU resides a judicial vacancy occurs and is filled once each 1 1/2 years. That being the case by the year 2016 at least 1 non-LDS judge could be appointed to that district which could then hear that case. Obviously a motion to recuse would be filed and a favorable outcome in this case would provide that state court judge who is LDS ample basis to do so.

The claim against governor Huntsman is rejected on lack of standing grounds. Opinion at 6-7. That there is a violation of the Establishment Clause is not contested. That there is an actionable injury resulting from that violation is neither disputed. The sole issue is that that relief sought is claimed to be "speculative".

B. Taxpayer Standing The Supreme Court in Flast v. Cohen, 392 U. S. 83 stated that in Establishment Clause cases, which the claim involves, that the standard Article III standing requirements of an (1) injury (2) traceable to the defendant and (3) some form of relief capable of being given. See *Allen v. Wright*, 468 U. S. 737, 751 (1984). Petitioner should have taxpayer standing in this case as a state taxpayer and possibly as a federal taxpayer if any federal funds are used to support the Utah Judicial system. Petitioner would ask that the case be remanded to the lower court to develop the facts and the law in this respect. Also, an opportunity to amend the complaint to allege the necessary facts would be proper as the entire issue is raised for the first time by this court in its opinion affirming dismissal. Certainly, if the outcome on this claim hinges upon whether state taxpayer standing can be invoked in an analogous manner to Flast, the case is not "patently obvious" that it does not state a claim for relief.

C. Class Representation In Murphy v. Hunt, 455 U.S. 478, 482 (1982), a case where the capable-of-repetition doctrine was denied, the Supreme Court also indicated that had the petitioner sought to represent a class of injured persons, the case would have been actionable. See Id. at ("The question was no longer

live because even a favorable decision on it would not have entitled Hunt to bail [redress of the injury]. For the same reason, Hunt no longer had a legally cognizable interest in the result in this case. He had not prayed for damages nor had he sought to represent a class of pretrial detainees.")(emphasis added). Petitioner has had no opportunity to seek to represent a class of litigants in a similar predicament in Utah (obviously this would require obtaining counsel, which could be done). Thus remand would be proper to allow Petitioner to amend the complaint and be given the opportunity to obtain counsel and represent a class of similarly situated litigants in Utah.

Another possibility would be to join or with counsel represent a type of revolving class, where while Petitioner's state court case might terminate prior to a resolution in federal court, another litigant with a case against a Church related institution could join that class as a case arose. An opportunity to amend the complaint along those lines should also be given, along with the chance to show via discovery that such a class would be viable in federal court.

Had opportunity to show Standing been given, Petitioner could have showed he did have standing.Thus the Tenth Circuit erred in assuming Petitioner could not show he had standing on Appeal and on these grounds the 10th Cir. Opinion affirming dismissal must be vacated.

B.

Standing can exist to redress a Separation of Church / State violation in Utah, where a Separation of Church / State violation is in fact found to exist, where injury in fact is found to exist resulting from that violation, but where because the time required to correct the violation naturally would take so much time that the person affected by the violation could not benefit from that remedy, making it impossible to redress that Separation of Church / State violation?

Given the unique nature of the separation of church / state violation of this case and the near impossibility for any citizen to be able to have standing to correct that violation some remedy should be fashioned to allow standing.

Petitioner believes that a variation to the capable of repetition, yet avoiding review would be appropriate where in civil rights cases if the redress would benefit society as a whole, then standing should be permitted.

Alternatively, where a violation is found to exist and injury in fact present, as in this case, perhaps the burden should shift to the party seeking to defeat standing to show that the complaining party would not beneifit in the future from the remedy sought.

V.

The Tenth Circuit Circuit's dismissal of the 1985 claim ignores the plain language of 1985; the Facts of the Complaint fully support a 1985 Claim

A. 42 U.S.C. §1985 provides:

If (1) two or more persons in any State or Territory (2) conspire to deter, by (3) force, intimidation, or threat, (4) any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or (5) to injure such party or witness in his person or property on account of his having so attended or testified, or (6) to influence the verdict, presentment, or indictment or any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or (7) if two or more persons (8) conspire (9) for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, (10) with intent to deny to any citizen the equal protection of the laws, or (11) to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws . . . the party so injured or deprived may have an action for the recovery or damages occasioned by such injury or deprivation, against any one or more of the conspirators. (numbering added) See 42 U.S.C. 19S5(2).

1. The necessary elements are satisfied by the facts of the complaint.

Petitioner asks the court to examine the seriousness of the misconduct of the defendants The Amended Complaint adequately alleges that (1) two or more of the defendant's [AC at ¶¶86, 88, 116] (2) conspired [Id.] (3) by force, intimidation, or threat [AC at ¶¶69, 87] (4) any party or witness in any court of the United States from attending such court, or from testifying to l any matter pending therein, freely, fully, and truthfully [Petitioner is in fact a party to the federal and state court cases; see also AC at ¶¶69, 87, ¶123 which shows that as a result of the illegally obtained arrest warrant he could not give his testimony in his deposition, or depose other witnesses and otherwise attend any hearing within the state of Utah]. Thus each of the elements are satisfied for recovery under §1985.

That Petitioner was threatened goes without saying. Was there a threat? Yes there was. If Petitioner had gone to Utah for any court related proceeding he was under the threat of arrest. That is a threat. Simply because they did not openly verbally make the threat does not matter. The threat was real and the threat was understood and the defendants were aware that the threat would be understood by Petitioner and force him to forego hiscourt related proceedings in Utah as a result. However, additional elements are also satisfied.

2. or (6) to influence the verdict [the actions of forcing Petitioner to forego depositions and obtain the evidence needed to win his case would in fact influence the verdict the civil case against them] 3. (7) if two or more persons (8) conspire (9) for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, [Utah is a State, the purpose of defendants conspiring together to

obtain the unlawful arrest warrant was for the purpose of impeding, hindering or defeating Petitioner in his court cases against defendants; see AC ¶¶85, 119, 254,117, ¶123] (10) with intent to deny to any citizen the equal protection of the laws [see AC ¶¶85, 119, 254,117]

4. or (11) to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws [to put someone in jail based on an unlawful arrest warrant is an injury, further it uses physical force and it doesn't matter whether it is the defendants who use the force or if they unlawfully persuade another to do it for them, it is still an unlawful injury.

There are then four (4) separate basis which are satisfied for recovery under 1985 and that is significant. , Simply because the conspiracy ended up with a judge issuing an,unlawful Order obtained through fraud does not provide a defense to any of the elements of §1985.

VI.

Each Element for Claim under RICO was satisfied in the case at bar

A. 18 U.S.C. §1503 is applicable.

The District Court alleges that §1503 is inapplicable (R&R at 22) because Petitioner is not a juror, or officer of the court. §1503 provides:

(a) Whoever cormptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or

officer who may be serving ..., or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b). .L.[emphasis added]

Petitioner does not have to be serving as a juror or magistrate etc. As the underlined text indicates, if defendants "corn1ptly or by threats or force. .. influences, obstructs or impedes or endeavors to influence the due administration of justice"

Did defendants corruptly or by threats or force influence, obstruct, or impede or endeavor to do so? It is a resounding yg that they did. There conduct as alleged is in fact corrupt under the common definition of the ' The definition, one of many, all of which are similar for the word "corrupt" states:

corrupt Pronunciation: ks- · rsp: Function: adjective : having an unlawful or evil motive; especially : characterized by improper and usually unlawful conduct intended to secure a benefit for oneself or another (as by taking or giving bribes) —cor·r·upt·ly adjective — (:0I`·l`11pt·I1€SS noun Source: Merriam-Webster`s Dictionary of Law, © 1996

Merriam-Webster, Inc. See http:lldictionary.reference.com/browse/corrupt word. (Corrupt is not limited to taking of money etc. and can include all conduct with unlawful motive). They did in

fact, by their corruptly obtaining of the arrest warrant influence and obstruct and impede Petitioner from fully participating in, and prosecuting his federal and court cases. However, Congress uses the disjunctive "or" when drafting §1503. So after the word "corruptly" comes the word "or", and then Congress states that if by "threats" or "force" "influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice" shall be liable under 1503. Certainly the threat of arrest, which was certain given a bench warrant, when Petitioner traveled to Utah for a court proceeding can be considered a threat under 1503.

Whether liability if found due to the corrupt manner in which the arrest warrant was obtained or otherwise, the elements are satisfied for liability under 1503, or at least discovery or the opportunity to amend the complaint is merited.

VII.

Due Process of Law requires a Reply Brief, Oral Argument Where No Briefing was permitted in the District Court and the Court of Appeals Fashioned new reasons for dismissal for the first time on appeal

Due to the many factual errors, along with the Tenth Circuit's assumption that Petitioner could not show Article III standing had the case been remanded to the District Court, oral argument and a Reply Brief would have been helpful to the due administration of justice and Petitioner asks that the case be remanded to the Tenth Circuit to allow for the submission of a Reply

Brief and to be heard at oral argument by the Circuit Panel in the case. Petitioner sole request of to be heard by an impartial tribunal and a Reply Brief would be helpful for that.

In addition to the legal mistakes previously mentioned, the Tenth Circuit found for the first time on appeal (or certainly implied he was) that Petitioner was seeking monetary damages from judge Howard. See Order of Appendix A at 5. Also, it found that the arrest warrant was rescinded in August 2005 (Appendix A at 2) where the Complaint stated the fact Judge Howard refused to rescind the arrest warrant in February 2006 (See Appendix F, Amended Complaint ¶105). Additionally the Order of Appendix A completely fails to address whether the defendant's violated Rule 3.3(d) of the Utah Rules of Professional Conduct in seeking ex parte the hearing and arrest warrant without informing the judge of the materially critical information that Petitioner was unable to attend that hearing, which was a violation of Rule 3.3(d).

Thus a reply brief and oral argument would have been helpful to Petitioner in the case in bringing about a just outcome.

CONCLUSION & RELIEF SOUGHT

The relief sought, which would be in the interest of justice and the due administration of law, would be for the case to be remanded back to the Circuit Court or District Court to allow for the development of the law and facts of the case which really never was permitted which resulted in faulty facts and law being applied. Opportunity to amend the Complaint to show Standing

for the Separation of Church / State claim should be allowed and to remedy any other defects which are can be corrected.

Also, a chance to submit a reply breif would be workable and a chance to be heard at oral argument by the Tenth Circuit would be helpful.

Respectfully Submitted,

s/_____

Aaron Raiser

Appendix A - United States Court of Appeals for the Tenth Circuit Order affirming Dissmisal.

United States Court of Appeals,
Tenth Circuit.

Aaron RAISER
Plaintiff-Appellant,
v.
DAVID M. KONO; DANIEL L. STEELE; FRED HOWARD, official capacity; BENNETT TUELLER JOHNSON & DEERE; BRIGHAM YOUNG UNIVERSITY; JON HUNTSMAN, official capacity,
No. 06-4243
(D.C. No. 2:06-CV-256-TC)
(D. Utah)
July 5, 2007

Before McCONNELL, PORFILIO, and BALDOCK, Circuit Judges.

ORDER AND JUDGMENT [FN*]

FN*. After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed. R.App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions

of 10th Cir. R. 36.3. It may be cited, however, for its persuasive value consistent with Fed. R.App. P. 32.1 and 10th Cir. R. 32.1.

Plaintiff-appellant Aaron Raiser appeals the district court's sua sponte dismissal of his First Amended Complaint, which attempted to set forth civil rights and RICO claims, and its denial of his motion for recusal of a magistrate judge. Because we conclude that it is patently obvious that Mr. Raiser could not prevail on the facts and theories alleged, we affirm.

I.

This case has its origin in a Utah state-court case filed by Mr. Raiser against Brigham Young University (BYU), which was represented by David M. Kono and Daniel L. Steele, of the law firm of Bennett Tueller Johnson & Deere.

In that case, defendant Judge Fred Howard issued a civil bench warrant on July 19, 2005, when Mr. Raiser failed to appear for a supplemental hearing noticed by defendants "to identify property and to apply the property toward the satisfaction" of an attorney-fee award entered as a sanction. See Utah R. Civ. P. 64(c)(2). FN1 The bench warrant was stricken on August 19, 2005.

[FN1] Mr. Raiser asserts error in defendants' state-court citation to repealed Utah R. Civ. P. 69, which addressed proceedings supplemental to the execution of a judgment until November 1, 2004. The erroneous citation did not affect Mr. Raiser's rights in any way and does not constitute grounds for reversal.

Mr. Raiser then filed this case in federal district court, alleging that BYU, its lawyers, and the law firm conspired with Judge Howard to violate his constitutional rights to interstate travel, access to federal and state courts in Utah,due process, and equal protection of the laws. He claimed that the attorneys were aware that he was homeless and could not afford to appear for the Rule 64(c)(2) hearing, but they did not inform Judge Howard of this fact.

And even after Mr. Raiser advised the court of his financial situation, Judge Howard did not retract the warrant. According to Mr. Raiser's Amended Complaint, BYU, the attorneys, the law firm, and Judge Howard violated the civil-rights provisions of 42 U.S.C. §§ 1983 and 1985 and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968. Also, he alleged that BYU,the attorneys, and the law firm committed common-law extortion and fraud on the court. Finally, Mr. Raiser claimed that defendant Governor Jon Huntsman and Judge Howard should be held liable under § 1983 for religious bias in the selection process for filling vacancies in the Utah judiciary.

The district court sua sponte dismissed Mr. Raiser's claims for failure to state a claim on which relief can be granted.FN2 It also denied his motion under 28 U.S.C. § 455 for recusal of the magistrate judge. On appeal, Mr. Raiser argues that his complaint was sufficient in all respects and takes issue with the denial of recusal.

[FN2] Several actions on the part of Mr. Raiser and the district court preceded the dismissal. First, the Chief Judge of the United States District Court for the District

of Utah placed appellant Aaron Raiser on that court's restricted filer list. Pursuant to the restriction order, a magistrate judge determined that Mr. Raiser's initial complaint was deficient and recommended that the court dismiss the action.

Mr. Raiser filed an untimely objection to the magistrate judge's report. The district court conducted a de novo review of the amended complaint and dismissed the case, mentioning the restriction order and citing 28 U.S.C.§ 1915(e)(2)(B) (providing for dismissal of deficient complaint filed by a pro se litigant proceeding in forma pauperis) and McKinney v. State of Okla. Dep't of Human Servs., 925 F.2d 363, 365 (10th Cir. 1991) (discussing the court's inherent power to enter a sua sponte dismissal of a patently deficient complaint). Today, this court reverses and remands the Chief Judge's order for a procedural irregularity. See In re Raiser, No. 06-4116 (10th Cir. July 5, 2007). And, because Mr. Raiser was not proceeding in forma pauperis in the district court, 28 U.S.C. § 1915(e)(2)(B) is inapplicable. Accordingly, this court reviews the district court's dismissal under the theory discussed in McKinney. See Mann v. Boatwright, 477 F.3d 1140, 1145 (10th Cir. 2007) (stating that we may affirm the judgment below "on any grounds for which there is a record sufficient to permit conclusions of law, even grounds not relied upon by the district court) (quotation omitted).

II.

Dismissals under Rule 12(b)(6) typically follow a motion to dismiss, which gives the plaintiff notice and an opportunity to amend his complaint. But in this circuit, "sua sponte dismissal of a meritless complaint that cannot

be salvaged by amendment comports with due process and does not infringe the right of access to the courts." Curley v. Perry, 246 F.3d 1278, 1284 (10th Cir. 2001). A sua sponte dismissal under Rule 12(b)(6) is not reversible error when: (1) it is "patently obvious that the plaintiff could not prevail on the facts alleged"; and (2) "allowing [the plaintiff] an opportunity to amend his complaint would be futile." McKinney v. State of Okla. Dep't of Human Servs., 925 F.2d 363, 365 (10th Cir. 1991) (quotation omitted); see also Andrews v. Heaton, 483 F.3d 1070, 1074 n.2 (10th Cir. 2007).

When ruling on dismissal, "a judge must accept as true all of the factual allegations contained in the complaint." Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007). A complaint "does not need detailed factual allegations," but "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do. Factual allegations must be enough to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1965 (2007) (quotation, alteration, and citation omitted).

This court reviews de novo a district court's dismissal for failure to state a claim upon which relief can be granted. Ruiz v. McDonnell, 299 F.3d 1173, 1181 (10th Cir. 2002). Based on our de novo review, we conclude that it was appropriate to dismiss Mr. Raiser's all claims against all defendants.

Claims against Judge Howard

To the extent that Mr. Raiser seeks monetary damages

from Judge Howard for actions taken in his judicial capacity, the claims were properly dismissed under the doctrine of absolute judicial immunity. See Mireles v. Waco, 502 U.S. 9, 11 (1991) (per curiam). And "[f]ederal courts have no authority to issue a writ of mandamus to a state judge." Olson v. Hart, 965 F.2d 940, 942 (10th Cir. 1992). Accordingly, Mr. Raiser's request for a writ of mandamus requiring Judge Howard to rescind the bench warrant and fee award was not actionable. His request for a declaratory judgment against Judge Howard concerning the constitutionality of Utah's debt-collection procedures likewise is unavailing. "The Eleventh Amendment does not permit judgments against state officers declaring that they violated federal law in the past." Johns v. Stewart, 57 F.3d It is appropriate to repeat our previous comment that "merely because [a judge] belongs to and contributes to the Mormon Church would never be enough to disqualify him." In re McCarthey, 368 F.3d 1266, 1270 (10th Cir. 2004); see also Singer v. Wadman, 745 F.2d 606, 608 (10th Cir. 1984) (affirming denial of disqualification of judge, who was a Mormon, in case which plaintiff claims was "a challenge to the theocratic power structure of Utah"). 1544, 1553 (10th Cir. 1995) (quotation omitted). The district court did not err in dismissing the claims against Judge Howard.

Claims against Governor Huntsman

Mr. Raiser asserts that Governor Huntsman has violated his constitutional rights by exercising the power to appoint members of state judicial-selection committees in a way that results in a state judiciary composed disproportionately of judges belonging to the Church of Jesus Christ of Latter-day Saints (Church).

He seeks a writ of mandamus requiring the Governor to instruct members of the committees to disregard candidates' religious affiliation, while at the same time making progress toward decreasing the number of Church members. He alleges that, in lawsuits he files against Church-related entities, Church-member judges will be biased against him.

Any potential future harm that may befall Mr. Raiser from the Utah judicial-selection procedures is too speculative to fulfill the requirement of Article III of the United States Constitution that a case present a "case or controversy" between the individually named plaintiff and defendant. The Supreme Court has recognized that claims predicated upon such speculative contingencies afford no basis for finding the existence of a continuing controversy. See Rizzo v. Goode, 423 U.S. 362, 371-73 (1976). The federal courts lack jurisdiction to consider Mr. Raiser's claim and therefore dismissal was appropriate.

Claims against BYU and its attorneys

42 U.S.C. § 1983

As a basis for his § 1983 civil-rights claim, Mr. Raiser argues that BYU and its attorneys were acting under the color of state law because they engaged in concerted action with Judge Howard. It has been held that "an otherwise private person acts 'under color of' state law when engaged in a conspiracy with state officials to deprive another of federal rights." Tower v. Glover, 467 U.S. 914, 920 (1984). However, "[w]hen a plaintiff in a § 1983 action attempts to assert the necessary 'state action' by implicating state . . . judges in a conspiracy with

private defendants, mere conclusory allegations with no supporting factual averments are insufficient; the pleadings must specifically present facts tending to show agreement and concerted action." Sooner Prods. Co. v. McBride, 708 F.2d 510, 512 (10th Cir. 1983). This "standard is even stricter where the state officials allegedly involved in the conspiracy are immune from suit, as [is] the state court judge[] here." Id.

Mr. Raiser's amended complaint contains extensive allegations, but he does not present any facts establishing an agreement or meeting of the minds between BYU, its attorneys, and the state actors to deprive him of any federal rights. Thus, he failed to state a § 1983 claim. See id.; cf. Bell Atl. Corp., 127 S. Ct. at 1965, 1974 (holding that a complaint under § 1 of the Sherman Act is subject to dismissal for failure to state a claim if it does not provide "enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement" and stating, "we do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face. Because the plaintiffs here have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed"). The district court did not err in dismissing the § 1983 claims against BYU and its attorneys.

42 U.S.C. § 1985 and RICO

Mr. Raiser also alleges that BYU and its attorneys violated 42 U.S.C. § 1985 and RICO. Specifically, he argues that the bench warrant was traceable to their conspiracy to prevent him from tending to his lawsuits in Utah federal and state courts.

A deterrence claim under § 1985 arises when:

[T]wo or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or ... conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws. . . . § 1985(2). But "legal claims possessing a reasonable basis in law and fact simply do not constitute the 'force or intimidation' necessary to satisfy § 1985(2)." *Timmerman v. U.S. Bank*, N.A., 483 F.3d 1106, 1124 (10th Cir. 2007). The issuance of the bench warrant was a natural consequence of Mr. Raiser's failure to appear for the enforcement hearing. Defendants' actions in obtaining an award of attorneys' fees, setting an enforcement hearing, failing to inform the court of Mr. Raiser's financial status, seeking a bench warrant, and making a settlement offer cannot support a § 1985 claim.

Mr. Lawrence alleged that BYU and its attorneys violated 18 U.S.C. § 1503 (obstructing justice by trying to influence a juror or officer of the court) as part of his RICO claim. For the same reasons discussed above, Mr. Raiser's allegations do not describe conduct constituting the obstruction of justice. The RICO claim is meritless and was subject to dismissal.

Common law extortion and fraud upon the court Mr. Raiser alleges that the same acts of these defendants also make them liable under common-law extortion and fraud-

on-the-court theories. Generally, common-law extortion by a private person "is limited to obtaining property by threatening to inflict harm." Rael v. Sullivan, 918 F.2d 874, 876 n.1 (10th Cir. 1990) (quotation omitted). And this court has explained that "only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute a fraud on the court. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court." United States v. Buck, 281 F.3d 1336, 1342 (10th Cir. 2002) (quoting Weese v. Schukman, 98 F.3d 542, 552-53 (10th Cir. 1996)) (further quotation omitted).

Taken as a whole, the allegations in the amended complaint fall far short of asserting cognizable extortion or fraud-on-the-court claims. These claims, too, were properly dismissed.

III.

Finally, Mr. Raiser argues that the district court wrongfully denied his motion to recuse the magistrate judge because the applicable statutory provision states that "a judicial official "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a) (emphasis supplied). Mr. Raiser asserts that the provision's wording requires the magistrate judge, not the district court, to rule on his motion. Having reviewed the district court's decision for an abuse of discretion, United States v. Mendoza, 468 F.3d 1256, 1262 (10th Cir. 2006), we see no error in either the district court's procedure or its determination.

IV.

The judgment of the district court is AFFIRMED. The Motion for Leave to File Appellees' Brief received from BYU, its attorneys, and their law firm is GRANTED. Mr. Raiser's renewed Motion to Strike Entry of Appearance and Motion to Present Oral Argument are DENIED.

Entered for the Court
s/_____
John C. Porfilio
Circuit Judge

Appendix B - Order On Rehearing

United States Court of Appeals,
Tenth Circuit.

Aaron RAISER
Plaintiff-Appellant,
v.
DAVID M. KONO; DANIEL L. STEELE; FRED HOWARD, official capacity; BENNETT TUELLER JOHNSON & DEERE; BRIGHAM YOUNG UNIVERSITY; JON HUNTSMAN, official capacity,
No. 06-4243
(D.C. No. 2:06-CV-256-TC)
(D. Utah)
Order Denying Rehearing
August 6, 2007

Before McCONNELL, PORFILIO, and BALDOCK, Circuit Judges.

Appellant's Petition for Rehearing is denied.

Entered For the Court
Elizabeth A. Shumaker, Clerk

By: s/_____
Deputy Court Clerk

Appendix C - Order Dismissing Case – United States Federal Court District of Utah

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

AARON RAISER,
Plaintiff,
vs.
DAVID M. KONO, et al.,
Defendants.
Case No. 2:06-CV-256 TC
ORDER
AND MEMORANDUM DECISION

This matter is before the court on the question of whether pro se Plaintiff Aaron Raiser's March 28, 2006 Complaint has merit. The matter was referred to the United States Magistrate Judge Samuel Alba. The referral order directed the magistrate judge to "review this case to determine whether the action is meritorious, duplicative or frivolous and therefore subject to dismissal pursuant to filing restrictions imposed on Mr. Raiser by an order entered by Chief Judge Dee Benson on April 14, 2006." (Dkt # 12.)

Judge Alba issued a Report and Recommendation (R&R) (Dkt # 15) in which he (1) concluded that Plaintiff's case lacks merit and (2) recommended dismissal of Plaintiff's Complaint. Mr. Raiser filed an untimely objection (Dkt # 34) to the Report and Recommendation. FN1 He also filed a First Amended Complaint, which was not reviewed by Judge Alba and is not the subject of the R&R.

FN1 Mr. Raiser filed a Motion for Extension of Time and a Second Motion for Extension of Time to object to the R&R. Those motions are granted. The court has considered Mr. Raiser's objection (incorrectly styled as "Response to OSC").

After Judge Alba issued his R&R, Mr. Raiser filed a Motion for 28 U.S.C. § 455 Recusal of Judge Alba. Mr. Raiser also filed a Motion for 28 U.S.C. § 455 Recusal of Chief Judge Dee Benson, and a "Motion to Stay Proceedings Pending Appellate Review of 2006mc00382" (in which he requests a stay pending appellate review of the Judge Benson Order quoted in the referral order).

A.

Mr. Raiser's Motion for 28 U.S.C. § 455 Recusal of Chief Judge Dee Benson and Motion to Stay Mr. Raiser bases his motion to recuse on Judge Benson's April 18, 2006 Order designating Mr. Raiser as a restricted filer, and the language of the referral order that quoted Judge Benson's April 2006 Order.

Because Mr. Raiser filed his Complaint on March 28, 2006 (before he became a restricted filer), Judge Benson's Order does not directly apply. That is, contrary to Mr. Raiser's contention, Judge Benson does not have "final say in this case as to whether it goes forward." (See Dkt # 24 at 2.) Moreover, the R&R does not conclude that dismissal is appropriate because of Mr. Raiser's restricted filer status. Instead, it looks at the merits of the complaint based on issues such as jurisdiction (e.g., the Rooker-Feldman doctrine) and immunity doctrines.

Accordingly, Mr. Raiser's Motion for Recusal of Judge Benson is DENIED. For similar reasons, Mr. Raiser's "Motion to Stay Proceedings Pending Appellate Review of 2006mc00382"
is DENIED.

B.
Mr. Raiser's Motion for Recusal of Magistrate Judge Samuel Alba Mr. Raiser moves for recusal of Magistrate Judge Samuel Alba under 28 U.S.C. § 455.
Section 455 provides, in pertinent part, that:

Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. 28 U.S.C. § 455(a) (emphasis added).

Mr. Raiser bases his motion on three grounds: (1) "the way he was treated by the secretary answering the phone on about May 22, 2006[,] for [M]agistrate Alba who continually interrupted Plaintiff and then hung up on him when he asked her if she would let him finish"
(Mr. Raiser "assume[s] that her attitude towards Plaintiff is shared by Magistrate Alba"); (2) "the magistrate has some type of contractual relationship with BYU [Brigham Young University]"FN2 regarding hiring of interns, and the alleged contract "shows possible bias and the potential for such" because "the magistrate might not want to rule against BYU as it might cause offense to the interns or to BYU"; and (3) assuming, without evidence, that Magistrate Judge Alba is a member of the Church of Jesus Christ of Latter Day Saints (the LDS Church), such alleged affiliation would necessarily bias Judge Alba in favor of the LDS Church and its private educational

institution, Brigham Young University. (See Dkt #'s 20, 21.)

FN2 BYU is a Defendant.

Mr. Raiser's motion for recusal is based on speculation. "[C]onclusions, rumors, beliefs and opinions are not sufficient to form a basis for disqualification. [Plaintiff] must state with required particularity the identifying facts of time, place, persons, occasion and circumstances." Hinman v. Rogers, 831 F.3d 937, 939 (10th Cir. 1987) (internal citation omitted). Mr. Raiser's conclusory statements regarding Magistrate Judge Alba's alleged bias are not backed up by any evidence of time, place, persons, occasion or circumstances. Mr. Raiser does not provide any valid basis for believing that Magistrate Judge Alba's impartiality might reasonably be questioned, and so his motion for recusal is DENIED.

C.
Magistrate Judge Alba's Report and Recommendation and Mr. Raiser's First Amended Complaint By filing his First Amended Complaint in August 2006, Mr. Raiser technically mooted Judge Alba's R&R, which focused on the now-superceded initial Complaint. But the court has conducted a de novo review of the issues and finds that Judge Alba's conclusion regarding Mr. Raiser's March 2006 Complaint is correct. Furthermore, Mr. Raiser's First Amended Complaint presents the same problems addressed in Judge Alba's R&R, and his amendments do not cure the deficiencies identified in the R&R. See also 28 U.S.C. § 1915(e)(2)(B) ("the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim

on which relief may be granted"); McKinney v. State of Oklahoma Dep't of Human Servs., 925 F.2d 363, 365 (10th Cir. 1991) (allowing court to sua sponte dismiss pro se litigant's complaint for failure to state a claim when it is "patently obvious that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile"). For substantially the same reasons set forth in the R&R, the court finds that Mr. Raiser's First Amended Complaint lacks merit. Accordingly, Mr. Raiser's First Amended Complaint is DISMISSED.

ORDER

For the reasons set forth above, the court orders as follows:

1. Mr. Raiser's first Motion for Extension of Time (Dkt # 17) and second Motion for Extension of Time (Dkt # 29) are GRANTED.
2. Mr. Raiser's Motion for 28 U.S.C. § 455 Recusal of Chief Judge Dee Benson (Dkt # 23) is DENIED.
3. Mr. Raiser's Motion for 28 U.S.C. § 455 Recusal of Magistrate Judge Samuel Alba (Dkt # 20) is DENIED.
4. Defendant Fred Howard's Motion to Dismiss (Dkt # 18) is DENIED as MOOT.
5. Defendant Jon Huntsman's Motion to Dismiss (Dkt # 35) is DENIED as MOOT.
6. Mr. Raiser's Motion to Stay Pending Appeal (Dkt # 25) is DENIED.
7. The Clerk of the Court is directed to close the case.

DATED this 25th day of September, 2006.

BY THE COURT:
TENA CAMPBELL
United States District Judge

Appendix D - Report & Recommendation Dismissing Case – United States Federal Court District of Utah (Excerpts pertinent to case - to save space / cost etc.)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

AARON RAISER,
Plaintiff,
v.
DAVID M. KONO, DANIEL L. STEELE, FRED HOWARD in his official capacity, BENNETT TUELLER JOHNSON & DEERE, BRIGHAM YOUNG UNIVERSITY, and JON HUNTSMAN in his official capacity,
Defendants.

Case No. 2:06-Cv-256 TC
REPORT AND RECOMMENDATION

***

BACKGROUND (AS DERIVED FROM PLAINTIFF'S COMPLAINT, INCLUDING EXHIBITS)
The facts alleged in Plaintiff's complaint discuss three separate actions brought by Plaintiff against Brigham Young University (hereafter referred to as "BYU"). First, Plaintiff filed an action in Utah's Fourth District Court in August 2002, alleging common law torts against BYU. In September 2002, BYU removed the case to federal court. Plaintiff then filed a motion to have the case remanded to state court. Nothing happened until approximately a year

later, when Plaintiff's motion was suddenly granted and the case was remanded. After the case was remanded to state court, Plaintiff filed a motion to amend the complaint.

BYU opposed the motion to amend. Plaintiff filed a motion for sanctions. The state judge denied Plaintiff's motion to amend and instead awarded BYU Rule ll sanctions under the Utah Rule of Civil Procedure, to be paid by Plaintiff, for $2,791. Plaintiff filed a motion to reconsider. In response, the state judge ordered further monetary sanctions against Plaintiff for filing the motion to reconsider.

Second, Plaintiff is the plaintiff in a federal case involving alleged civil rights violations. At a hearing in April 2005, Plaintiff, who lives in California, appeared by phone. United States District Judge Tena Campbell, the judge in the case, ordered Plaintiff to conduct the deposition of a BYU witness in person. Plaintiff told Judge Campbell that he was homeless and barely had enough money to survive from day to day.
The court still ordered Plaintiff to get to Utah within three months for the deposition. Counsel for BYU who attended that hearing are Defendants Daniel Steele and David Kono. Plaintiff claims they were present at the hearing and heard Plaintiff state that he was homeless and barely had enough money to survive from day to day.

Plaintiff alleges that after Defendants Steele and Kono heard of Plaintiff's financial circumstances, they went to the state judge in the state case and prepared an "ex parte motion and Order requiring Plaintiff to be in Utah in Person on July 19, 2C05." Plaintiff alleges that "BYU

drafted that motion and Order and it specifically stated that Plaintiff could be arrested if he did not show up," and that BYU picked the date July 19, 2005, as the hearing date. July 19, 2005, was the last day for Plaintiff to do discovery in the federal case. Plaintiff claims he had planned to depose the witnesses in the federal case around July 5 to avoid the deadline date for discovery. Plaintiff claims counsel for BYU picked July 19 as the hearing date to force Plaintiff to do the depositions on the last day of discovery when he had to be there or face arrest.

Plaintiff claims that because he only had money for one trip to Utah, he was forced to postpone the depositions until July 19. Plaintiff claims that counsel for BYU then withdrew their witness's availability for July 19, and that counsel for BYU also claimed privilege from disclosing any information, which privilege was later ruled improper. Plaintiff claims that he then had no time before the discovery deadline to finish discovery.

Plaintiff did not attend the July 19 hearing and BYU asked for the arrest warrant and it was issued. Plaintiff appealed the issuance of the arrest warrant and the "near $3000 sanction." Plaintiff claims that the Utah Court of Appeals concluded that no final appealable order existed.

Plaintiff was told, when he called the trial court, that the warrant had been dropped because no one had shown up at the latest hearing. Based on that information, Plaintiff did not appeal the matter to the Utah Supreme Court. Because Plaintiff had filed a motion to recuse Judge Howard (which was denied), at the time he called the case

was being handled by a different judge. When the case returned to Judge Howard, Judge Howard refused to rescind the order.

Third, Plaintiff filed a breach of contract case against BYU in state court in July 2002 when BYU police "singled Plaintiff out and unlawfully detained Plaintiff on campus as a student in violation of 42 U.S.C. [§] 1983, when he was a student in 2002 and when a student security guard supervised by the BYU police approached one of Plaintiff's former roommates, a friend . . . and began telling his friend of the many negative things that police dispatch (appeared to have) had on Plaintiff." Plaintiff claims that case was dismissed because the trial court held that the four corners of the contract did not specifically prohibit the BYU police and security from that behavior. Plaintiff appealed to the Utah Court of Appeals and lost.

Plaintiff then appealed to the Utah Supreme Court. Plaintiff claims the Utah Supreme Court allowed BYU to file a late response, and as a result, Plaintiff's writ of certiorari was denied. Plaintiff's motion to strike the late brief was denied. Plaintiff "suspects that the motion to strike was not forwarded to the justices."

Plaintiff alleges that Governor Huntsman is in charge of selecting members of the judicial selection committees, which makes binding recommendations for judges to fill the vacancies for the judiciary of Utah. Plaintiff claims that of the twelve state judges involved in his cases, all twelve were members of The Church of Jesus Christ of Latter-day Saints (hereafter referred to as "LDS Church"), which, Plaintiff alleges, does not represent the

community.

ANALYSIS

A complaint's sufficiency is a question of law requiring the court to decide whether the factual allegations, if true, would entitle Plaintiff to some form of legal remedy. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Dunn v. White, BB0 F.2d 1188, 1190 (10* Cir. 1989), cert. denied, 493 U.S. 1059 (1990). The court accepts all well-pleaded facts as true and draws inferences from those facts in favor of Plaintiff. See Baucnman v. West High Sch., 132 F.3d 542, 550 (lO" Cir.), cert. denied, 524 U.S. 953 (1998); Dunn, 880 F.2d at 1190. However, legal conclusions, deductions, and opinions couched as facts are not presumed to be true, and "conclusory allegations without supporting factual averments are insufficient to state a claim upon which relief can be based." Fogle v. Pierson, 435 E.3d 1252, 1263 n.7 (l0" Cir. 2006). In addition, because Plaintiff is proceeding pro se, the court construes his pleadings and arguments liberally. See Haines v. Kerner, 404 U.S. 519, 520 (1972); Ledbetter v. City of Topeka, Kansas, 318 F.3d 1183, 1187 (10" Cir. 2003).

In his 113-page complaint (including exhibits), Plaintiff sets forth five main claims for relief. First, Plaintiff claims an action under 42 U.S.C. 5 1983 against Defendants Kono, Steele, BYU, Bennett Tueller Johnson & Deere, and Judge Howard. Second, Plaintiff claims an action under 42 U.S.C. § 1985 against Defendants Kono, Steele, BYU, and Bennett Tueller Johnson & Deere. Third, Plaintiff has brought a RICO claim against Defendants Kono, Steele, BYU, and Bennett Tueller Johnson &

Deere. Fourth, Plaintiff has brought a common law extortion claim against D&fEhd5htS Kono, Steele, BYU, and Bennett Tueller Johnson & Deere. Fifth, Plaintiff has brought an action under 42 U.S.C. 5 1983 against Governor Jon Huntsman and Judge Fred Howard. Sixth and finally, Plaintiff has brought a common law abuse of legal process claim against Defendants Steele, Kono, BYU, and Bennett Tueller Johnson & Deere. The court addresses each of these arguments in turn.

I. 1983 Claim

A. The court lacks jurisdiction over this claim under the . Rooker-Feldman doctrine.

Federal district courts do not have jurisdiction to review, reverse, or invalidate state court decisions. See District of Columbia Ct. of App. v. Feldman, 460 U.S. 462, 482—86 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). The Rooker-Feldman doctrine bars "a party losing in state court . . . from seeking what in substance would be appellate review of [a] state judgment in a United States District Court, based on the losing party'a claim that the state judgment itself violates the loser's federal rights." Johnson v. De Grandy, 512 U.S. 997, 1005-06 (1994).

***

The Tenth Circuit has understood this language to mean that the Rooker-Feldman doctrine applies only to suits filed in federal courts "after state proceedings are final." Guttman v. Khalsa, 446 F.3d 1027, 1032 (10" Cir. 2006).

In Guttman, the Tenth Circuit also explained that "a judgment would be considered final for Rooker-Feldman purposes: (1) 'when the highest state court in which review is available has affirmed the judgment below and nothing is left to be resolved'; (2) 'if the state action has reached a point where neither party seeks further action'; or (3) 'if the state court proceedings have finally resolved all the federal questions in the litigation, but state law or purely factual questions (whether great or small) remain to be litigated.'" Id. at 1032 n.2 (quoting Federacion de Maestros de Puerto Rico V. Junta de Relaciones del Trabajo de Puerto Rico, 410 F.3d 17, 24 (1" Cir. 2005)).

Here, Plaintiff is complaining of an arrest warrant that was issued because he did not appear at a hearing regarding a civil judgment that had been entered against him in state court. It appears that the Rooker-Feldman doctrine applies in this case because, from what the court gathers from Plaintiff's complaint, presumably a final order had been issued in that case. Thus, the proper course of protesting the issuance of the arrest warrant was to use the state court system for appealing such actions by a state district judge. As a result, it appears that this court has no subject matter jurisdiction over this claim. However, as set forth below, even if the Rooker—Feldman doctrine does not apply to this claim, Plaintiff's claim should still be dismissed because it lacks merit. In addition, Judge Khalsa, 446 F.3d 1027, 1032 (l0" Cir. 2006). In Guttman, the Tenth Circuit also explained that "a judgment would be considered final for Rooker-Feldman purposes: (1) 'when the highest state court in which review is available has affirmed the judgment below and nothing is left to be resolved'; (2) 'if

the state action has reached a point where neither party seeks further action'; or (3) 'if the state court proceedings have finally resolved all the federal questions in the litigation, but state law or purely factual questions (whether great or small) remain to be litigated.'" Id. at 1032 n.2 (quoting Federacion de Maestros de Puerto Rico V. Junta de Relaciones del Trabajo de Puerto Rico, 410 F.3d 17, 24 (1" Cir. 2005)).

II. 1985 Claim
***
A. The court lacks jurisdiction over this claim under the Rooker~Feldman doctrine.

***

Third, Plaintiff has brought a RICO claim against Defendants Kono, Steele, BYU, and Bennett Tueller Johnson & Deere.

***

A. This court lacks jurisdiction over this claim under the Rooker—Feldman doctrine.

IV. Common Law Bxtortion Claim
***

V. Second Section 1983 Claim
***

E. Governor Huntsman is not a "person" within the

meaning of 42 U.S.C. § 1983.

Second, Plaintiff's claim against Governor Huntsman fails because the Supreme Court has held that neither states nor state officers sued in their official capacities are "persons" within the meaning of 42 U.S.C. § 1983. See Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989). A lawsuit against a state official in his official capacity is considered a lawsuit against the official's office, and as such, a lawsuit against the state itself. See id. Plaintiff brought his action against Governor Huntsman because of the governor's role in selecting members of the state judicial selection committee; that role is performed in Governor Huntsman's official capacity as the state governor. As a result, Plaintiff's claim against Governor Huntsman lacks merit.

VI. Common Law Abusn of Llgll Process Claim
***

DATED this 24 day of July, 2006.
BY THE COURT:

Samuel Alba
United States Chief Magistrate Judge

Appendix E – Docket U.S. Court of Appeals for the Tenth Circuit

Docket: U.S. Court of Appeals for the Tenth Circuit
Case: 06-4243

10/12/2006 Civil case docketed. Preliminary record filed. DATE RECEIVED: 10/12/06. Record on appeal due 10/26/06 for Markus B. Zimmer Notice of appearance due 10/26/06 for Jon Huntsman and Fred Howard.
10/12/2006 Pro se notice of appearance filed by Aaron Raiser in 06-4243. CERT. OF INTERESTED PARTIES (y/n): n.
10/12/2006 Pro se docketing statement filed by Aaron Raiser in 06-4243. Original and 4 copies c/s: y.
10/23/2006 Notice of appearance filed by Brent M. Johnson as attorney for Fred Howard in 06-4243. CERT. OF INTERESTED PARTIES (y/n): n.
10/30/2006 Record on appeal filed: 1 Volume - Pleadings. Copy filed in Volume (y/n): y. Filed on 10/27/06.
10/31/2006 Jurisdictional review complete. Appellant's brief due 12/11/06 for Aaron Raiser.
11/02/2006 Notice of appearance filed by Nancy L. Kemp in 06-4243 as attorney for Jon Huntsman. CERT. OF INTERESTED PARTIES (y/n): n.
11/22/2006 Appellant's motion filed by Appellant Aaron Raiser in 06-4243 to extend time to file appellant's brief until 1/10/07. [06-4243] Original and 3 copies. c/s: y.
11/22/2006 Order filed by Clerk granting Appellant's

motion to extend time to file apet brief. [1977520-1] A/Pet brief due 1/10/07 for Aaron Raiser. No further extensions of time will be granted on the clerk's authority. Parties served by mail.
01/09/2007 Appellant's brief filed by Aaron Raiser in 06-4243. Original and 7 copies. c/s: y. Served on 1/8/07. Oral argument? Pro Se. Appellees' brief due 2/12/07 for Jon Huntsman and Fred Howard.
01/16/2007 Notice of appearance filed by David M. Kono and Daniel L Steele in 06-4243 as attorneys for David Kono, Daniel L. Steele, Bennett Tueller and Brigham Young in 06-4243. CERT. OF INTERESTED PARTIES (y/n): n.
01/24/2007 Appellee's notice that response brief will not be filed by Appellee Fred Howard in 06-4243. Original and 7 copies. c/s: y.
01/24/2007 Appellant's motion filed by Appellant Aaron Raiser in 06-4243 to strike entry of appearance and certificate of Interested parties. Original and 3 copies. c/s: y.
01/24/2007 Order filed by Clerk denying Appellant's motion to strike entry of appearance and certificate of interested parties [1994759-1]. Parties served by mail.
01/24/2007 E-Brief received from Appellee Jon Huntsman in 06-4243. Submission Type: Email.
01/26/2007 E-Brief received from Appellee Jon Huntsman in 06-4243. Submission Type: email.
01/30/2007 Appellee's brief filed by Jon Huntsman in 06-4243. Original and 7 copies. c/s: y. Served on 1/25/07. Oral Argument? n. Appellant's optional reply brief due 2/12/07 for Aaron Raiser.
02/01/2007 Appellant's reply brief filed by Aaron Raiser in 06-4243. Original and 7 copies. c/s: y.
02/06/2007 E-Motion (Motion for Leave to File

Appellees' brief) received from David M. Kono, Daniel L. Steele, Bennett Tueller and Brigham Young in 06-4243. Submission type: email.
02/08/2007 Appellant's "Renewed motion to strike" filed by Appellant Aaron Raiser in 06-4243 [06-4243]. Original and 3 copies. c/s: y
02/08/2007 Motion for leave to file appellees' brief [06-4243] filed by David M. Kono, Daniel L. Steele, Bennett Tueller and Brigham in 06-4243. Original and 3 copies. c/s: y
02/12/2007 E-Brief Brief received from David M. Kono, Daniel L. Steele, Bennett Tueller and Brigham Young in 06-4243 Submission Type: email
02/12/2007 E-attachment to the brief received from David M. Kono, Daniel L. Steele, Bennett Tueller, and Brigham Young in 06-4243. Submission type: email
02/12/2007 Appellant's renewed motion to strike submitted to court.
02/12/2007 Motion for leave to file appellees' brief filed by David M. Kono, Daniel L. Steele, Bennett Tueller, and Brigham Young in 06-4243 submitted to court.
02/12/2007 Order filed by Judges Kelly and McConnell referring Appellant's renewed motion to strike [1999399-1] and motion for leave to file appellees' brief [1999401-1] TO THE PANEL ON THE MERITS. Parties served by mail.
02/12/2007 Appellant's response filed by Aaron Raiser in 06-4243 to motion for leave to file a briefi. Original and 3 copies. c/s: y
02/13/2007 Appellees' brief received from David M. Kono, Daniel L. Steele, Bennett Tueller, and Brigham Young in 06-4243, but not filed (pending motion). Original and 7 copies. c/s: y.

02/14/2007 Order filed by Clerk referring Appellant's "Opposition to Motion to File Brief," [2000545-1] REFERRED TO PANEL ON THE MERITS. Parties served by mail.
02/14/2007 Other E-document received from David M. Kono, Daniel L. Steele, Bennett Tueller, Brigham Young in Pleading type: Reply in Support of Motion for Leave to File Appellees Brief. Submission type: Email.
02/14/2007 Other E-document received from David M. Kono, Daniel L. Steele, Bennett Tueller and Brigham Young in 06-4243. Pleading type: Memorandum in Opposition. Submission type: Email.
02/15/2007 Reply filed by David M. Kono, Daniel L. Steele, Bennett Tueller and Brigham Young in 06-4243 to Appellant's response. Original and 3 copies. c/s: y
02/15/2007 Order filed by Clerk referring reply memorandum [2002079-1] REFERRED TO PANEL ON THE MERITS. Parties served by mail.
02/15/2007 Response in opposition filed by David M. Kono, Daniel L. Steele, Bennett Tueller and Brigham Young in 06-4243 to Appellant's motion to strike. Original and 3 copies. c/s: y
02/15/2007 Order filed by Clerk referring response in opposition to motion to strike [2002083-1] REFERRED TO PANEL ON THE MERITS. Parties served by mail.
04/11/2007 Case submitted to panel on the briefs pursuant to Rule 34 for Conference Calendar.
05/08/2007 Motion filed by Appellant Aaron Raiser in 06-4243 to present oral argument [06-4243]. Original and 3 copies c/s: y.
05/08/2007 Appellant's motion to present oral argument submitted to court.

07/05/2007 Order filed by Judges McConnell, Porfilio and Baldock. The Motion for Leave to File Appellees' Brief received from BYU, its attorneys, and their law firm is GRANTED. [1999401-1] Mr. Raiser's renewed Motion to Strike Entry of Appearance and Motion to Present Oral Argument are DENIED. (located in the Order and Judgment). [1999399-1] [2027626-1]
07/05/2007 Terminated on the Merits after Submission Without Oral Hearing; Affirmed; Written, Signed, Unpublished. McConnell; Porfilio, authoring judge; Baldock. [06-4243] Parties served by mail on 7/5/07.
07/11/2007 Motion for Enlargement of Time to File Petition for Panel Rehearing filed by Appellant Aaron Raiser in 06-4243 until 8/20/07 [06-4243]. Original and 3 copies c/s: y.
07/11/2007 Appellant's motion to extend time to file petition for rehearing submitted to court.
07/16/2007 Order filed by Judges McConnell, Porfilio, and Baldock granting Appellant's motion to extend time to file petition for rehearing [2045007-1]. Apellant's petition for rehearing must be filed on or before 7/30/07. No further extensions of time will be granted. Parties served by mail.
07/30/2007 Petition for rehearing [06-4243] filed byAaron Raiser in 06-4243. Original and 3 copies. c/s: y.
07/30/2007 Document [2049931-1] Petition for rehearing filed by Appellant Aaron Raiser submitted to panel.
08/02/2007 Amended certificate of service (for the petition for Panel Rehearing) filed by Aaron Raiser in 06-4243.
08/06/2007 Order filed by Judges McConnell, Porfilio, and Baldock denying Petition for rehearing [2049931-

1].
08/14/2007 Mandate issued. Record on appeal return due 12/12/07.
08/22/2007 Motion for Justices to Certify They Read the Judgment Affirming received from Aaron Raiser in 06-4243, but not filed. Original and 3 copies. - Letter sent in response.
08/22/2007 Motion requesting Petition for Rehearing be Vacated for received from Aaron Raiser in 06-4243, but not filed. Original and 3 copies. Letter sent in response.
09/14/2007 Document: 1) Motion to Vacate Order Denying Oral Argument; 2) Motion to Vacate Order Denying the Filing of Post-Judgment Motions received from Aaron Raiser but not filed. Original and 0 copies. Served on 09/14/2007. Manner of Service: US Mail. (Response letter sent by dec).

Appendix F – Petitioner's Amended Complaint (AC)

Aaron Raiser, Pro Se
General Delivery
Canoga Park, Ca 91303\

In The United States District Court
for the District of Utah

Aaron Raiser,
Plaintiff;
v.
Brigham Young University,
Fred Howard,
official capacity,
Daniel L. Steele,
David M. Kono,
BENNETT TUELLER JOHNSON & DEERE,
Jon Huntsman,
official capacity,
Does 1-10,
Defendants.

No. 2-2006:cv00256,
First Amended Complaint

Plaintiff complains against defendants and for causes of action alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a resident of Los Angeles County, State of

California;

2. Defendant Brigham Young University is a Utah Corporation. At all times relevant hereto, was authorized to and was conducting business in Utah.

3. Defendant Fred Howard is a Utah State Judge and on information and belief is a resident of Utah County, At all times relevant hereto, the acts alleged herein of Fred Howard took place in Utah County.

4. Defendant Daniel L. Steele on information and belief is a resident of Salt Lake County. At all times relevant hereto, the acts alleged herein of defendant took place in either Utah and/or Salt Lake County.

5. Defendant David M. Kono on information and belief is a resident of Salt Lake County. At all times relevant hereto, the acts alleged herein of defendant took place in either Utah and/or Salt Lake County.

6. Defendant Jon Huntsman is governor of Utah and is in charge of selecting the members of the judicial selection committees.

7. Defendant BENNET, TUELLER JOHNSON & DEER is a Utah Corporation. At all times relevant hereto, was authorized to and was conducting business in Utah.

8. Doe One is believed to be Stephen W. Geary and on information and belief is a resident of Salt Lake County but is not named in the case until evidence verifies his part; at all times relevant hereto, the acts alleged herein of defendant took place in either Utah and/or Salt Lake County.

9. Doe Two is believed to be KIRTON & McCONKIE is a Utah Corporation but is not named pending further discovery; at all times relevant hereto, was authorized to and was conducting business in Utah.

10. Doe Three is believed to be Erik Davis and is not named pending further discovery; At all times relevant hereto, was a resident of Utah.

11. Doe Four is R. Willis Orton and is not named pending further discovery. On information and belief is a resident of Salt Lake County; at all times relevant hereto, the acts alleged herein of defendant took place in either Utah and/or Salt Lake County.

12. Doe Five is believed to be The Church of Jesus Christ Of Latter-Day Saints.

13. Willis Orton and Stephen W. Geary are employees or agents of KIRTON & McCONKIE.

14. Daniel L. Steele and David M. Kono are employees or agents of Defendant BENNETT TUELLER JOHNSON & DEER.

15. This action is brought pursuant to 42 U.S.C. § 1983, 1985, 18 U.S.C. § 1961 et. Seq., and state common law.

16. Jurisdiction is proper in this court pursuant to 28 U.S.C. § 1331, causes of action exists founded upon the U.S. Constitution or federal law. Jurisdiction is proper in this court pursuant to 28 U.S.C. § 1332, state law causes of action exists and diversity exists; the amount in controversy exceeds $75,000 exclusive of costs.

17. Venue is proper in this court is proper in this court pursuant to 28 U.S.C. § 1391, the acts giving rise to this action having arisen in Utah.

ALLEGATIONS RELE VENT TO ALL CLAIMS FOR RELEW

18. On or about August 26, 2002 Plaintiff filed in the Fourth District Court, State of Utah, a Complaint against BYU alleging various common law torts. See Exhibit A. State Case Docket Sheet.

19. On or about September 23, 2002, Counsel for BYU removed that case to the Federal District Court for the State of Utah. Exhibit B Docket 2: 02-cv-O1078-DB.

20. Removal was allegedly premised on 28 U.S.C. 1441.

21. 28 U.S.C. 1441 requires that the case being removed to federal court have a federal cause of action.

22. The case removed by BYU did not have a federal cause of action.

23. The case removed by BYU was rejected by the federal courts.

24. After being rejected by the federal court, Plaintiff filed the appropriate motion to get the case remanded back to state court. Exhibit B Doc. 2.

25. That motion was not initially ruled on.

26. Plaintiff then called the federal court and personally

spoke with Judge Benson's law clerk and explained that the motion needed to be ruled on so the case could be remanded.

27. Nothing happened.

28. Plaintiff again called the Judge Benson's law clerk and again reminded them of the matter.

29. Nothing happened.

30. Plaintiff gave up and decided to wait for the case to get remanded.

31. Economic forces caused Plaintiff to move to California where he remained.

32. Judge Benson did not remand the case until almost one year alter it was removed. Exhibit B Doc. 3.

33. After the case got remanded, Plaintiff attempted to amend the complaint.

34. Plaintiff filed the motion to amend the complaint on 2-27-04. Exhibit A.

35. BYU did not respond.

36. Plaintiff filed a motion to submit for decision on 3-16-04. Exhibit A.

37. BYU then responded to the motion to amend some 2 months after the motion to submit for decision on 5-26-04. Exhibit A.

38. BYU gave as a basis for denying the amended complaint was that it was over a year or so from the filing of the complaint and that due Plaintiff waiting 1 year to file the motion to amend it should be denied.

39. Plaintiff was incensed by such logic as the one year delay was caused by the unlawful removal of the case to federal court by BYU where no federal cause of action existed.

40. At the time Plaintiff read and re-read URCP Rule 11 t0 see if it applied to any motion for sanctions.

41. Alter reading URCP Rule 11, Plaintiff came to a reasoned conclusion that Rule ll wouldn't apply.

42. Plaintiff felt that the one year delay was prejudicial and caused by either gross negligence or purposeful misuse of the removal procedure by BYU.

43. Plaintiff then filed a motion for sanctions.

44. The Judge had first issued a ruling allowing Plaintiff to amend the complaint stating BYU would not be prejudiced and that it was early in the litigation (which ruling could not be found in the docket when Plaintiff asked for a copy), then issued a second ruling that amending after such a late stage was improper and removal of the case to federal court where no federal cause of action existed was ok and awarded BYU attorney fees per URCP 11 to be paid by Plaintiff. Exhibit E

45. The Ruling of Exhibit E also contains many misrepresentations, such as that Plaintiff waited 2 years to file the motion to amend the complaint, where it was

actually 18 months, (see Exhibit A date of filing of complaint August, 2002, motion to amend, Feb., 2003) and that about 14 months of delay resulted from BYU's removal of the case, that Plaintiff gave no authority for his motion for sanctions, where Plaintiff shows 28 U.S.C. 1441 did not allow removal (see Exhibit H legal basis of 28 U.S.C. 1441 did not support removal, Plaintiff is also unaware of any authority that a lack of authority for sanctions means a motion is
frivolous), and that Plaintiff should have used URCP 11 which could not apply to the motion for sanction, and that BYU response was timely, where the docket shows with no uncertainty that it was filed 2 months late after the notice to submit for decision deadline (see Exhibit A date of filing motion to submit 3/16/03. and the response by BYU was filed May 26, 2003).

46. Exhibit D shows the entry of the award of $2791.

47. Plaintiff filed a motion to reconsider that ruling, but the judge simply ordered further monetary sanctions against Plaintiff for filing the motion to reconsider. Exhibit F.

48. The original 3,000 or so sanction has been increased to $4748 by amendment by BYU, reflecting the additional sanctions allowed by defendant Howard.

49. The imposition of said sanctions are a flagrant and patent violation of the U.S. Constitution.

50. The referred to defendants are enforcing the sanction! contempt procedures in bad faith are motivated by a desire to harass.

51. The referred to state case has not reached a final

adjudication for Rooker-Feldman purposes.

52. The arrest warrant issued for Plaintiffs arrest by defendant Howard is void on its face and thereby subject to collateral attack; the arrest warrant was issued based on defendants representation of, and thereby based, the existence of a valid state statute, URCP 69 that allowed for the procedure, and URCP 69 does not exist. The motion which led to that arrest warrant was and is attached to the Order and is part and parcel of that Order and it is irrefutable that URCP 69 does not exist.

53. Plaintiff was also involved with BYU in a federal case for various federal civil rights violations.

54. At a hearing at the federal case on 4/19/05, various motions were heard and in the course of the hearing the judge required Plaintiff to do the deposition of a witness from BYU in person. See Exhibit C at 15-16.

55. At the hearing which Plaintiff had appeared by telephone, he accurately told the court that he was homeless and barely had enough money to survive from day to day. See Exhibit C at 16:13-20.

56. Despite the plea from the Plaintiff the court imposed a near impossible task of getting to Utah within 3 months for that deposition.

57. Counsel for BYU were defendants Daniel L. Steele and David M. Keno and these were present and heard Plaintiff state that be was homeless and barely had enough money to survive from day to day. Id. at 2.

58. Alter learning Plaintiff was homeless and near

penniless, Counsel for BYU then went to the state court judge and prepared an ex parte motion and Order requiring Plaintiff to be in Utah in Person on July 19, 2005. Exhibit Il.

59. BYU drafted that motion and Order and it specifically stated the Plaintiff could be arrested if he did not show up. Exhibit Il.

60. Counsel for BYU picked the date of July 19, 2005 for the hearing date.

61. July 19, 2005 was also the last day for Plaintiff to do discovery in the federal case.

62. Plaintiff had planned on deposing the witness in the federal case, who were from BYU, on or around July 5 or so as to not come against the cut off.

63. Counsel for BYU picked the 19th of July for the hearing date to force Plaintiff to do those depositions on the last day of discovery when he had to be there for the state hearing, or face arrest.

64. Plaintiff in fact had only enough money to travel to Utah one time and was forced to postpone the federal depositions until the 19th of July.

65. Counsel for BYU then withdrew their key witness' availability for the 19th of July.

66. Counsel for BYU then also claimed privilege from disclosing any information that would help Plaintiff with his case which claimed privilege was improper and later ruled to be improper.

67. Plaintiff then had no time prior to discovery cut off to get the information from BYU that Plaintiff needed.

68. Counsel for BYU was aware Plaintiff could not be in Utah prior to the 19th due to his poverty and work schedule.

69. Counsel for BYU additionally obtained that illegal Order for arrest warrant to force Plaintiff to postpone the federal depositions so they could then obstruct Plaintiff from obtaining the needed witness testimony in a federal ease and in fact succeeded at that.

70. BYU purposefully deceived the state court judge that URCP 69 gave authority for their motion and order. Exhibit I2.

71. URCP rule 69 does not exist.

72. BYU also violated Utah Rule of Professional conduct 3.3(d) which states that in an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse. Exhibit I2.

73. With that unlawfully obtained Order requiring Plaintiff to be in Utah or face arrest in hand, steps of Extortion were taken by the named members of the conspiracy when on 26 May 2005 Defendant Kono sent Plaintiff the email of Exhibit J.

74. That Exhibit J shows an attempt to at monetary gain or a thing of
high value, dismissal of a very valid court case against

BYU, murder the threat of physical force in the form of arrest based on an illegally obtained warrant.

75. Counsel for BYU was aware of Plaintiffs financial predicament and the infeasibility for him to make it to Utah and that was highly important for the judge to be aware of prior to issuing the Order.

76. If Plaintiff could make it to Utah it would be only once for some time to come due to the financial difficulty.

77. Counsel for BYU then noticed Plaintiffs deposition in Utah

78. Counsel for BYU acknowledged Plaintiff could not make that deposition due to his poverty. See Exhibit G. (The actual assertions by the sender are inaccurate; it does show that he was aware Plaintiff could not afford to travel to Utah)

79. Plaintiff did not attend that 7/19/05 hearing and BYU asked for the arrest warrant and it was given. See Exhibit A .entry for 7/19/05.

80. Plaintiff pointed out to the state Court that URCP rule 69 did not exist in various court filings in that proceeding.

81. Plaintiff pointed out to the state court in that proceeding that BYU violated in a sneaky way Utah Rule of Professional conduct 3.3(d) which states that "In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse."

82. Counsel for BYU was aware Plaintiff could not make it to Utah to attend that hearing he unlawfully obtained and once issued guaranteed BYU that Plaintiff would be arrested if he ever went back to Utah.

83. Counsel for BYU purposefully withheld the information from Defendant Howard that Plaintiff was homeless and near penniless which information would have assisted Defendant Howard in making an informed decision regarding how to proceed with the hearing.

84. Counsel for BYU purposefully withheld the information to obtain the arrest warrant for Plaintiff

85. Counsel for BYU purposefully withheld the information to obtain the arrest warrant for Plaintiff so as to interfere with Plaintiffs right to interstate travel, to interfere with his ability to prosecute his court cases against BYU as Plaintiff would then be unable to go to Utah for any hearings, court proceedings or to depose witnesses.

86. Counsel for the Mormon church also is alleged, on information and belief to have participated in the conspiracy with BYU to get Plaintiff unlawfully arrest.

87. With that illegally obtained arrest Plaintiff would not then be able to go to Utah for any hearings, court proceedings or to depose witness in his federal case against the Mormon church.

88. That Counsel for the Mormon church participated in the conspiracy is shown by Exhibit K which shows rm email from R. Willis Orton that he was to travel to Utah County for the hearing where the arrest warrant was issued which case he and his client otherwise would have had no interest

in. See Exhibit K. (". , .to allow us time to return to Salt Lake City following his supp order examination in Provo that morning.")

89. Plaintiff had given counsel fro BYU two phone numbers in order to conduct a deposition via phone that BYU was conducting tor the federal case of Plaintiffs father.

90. Plaintiff gave those numbers for the sole use of contacting him for the deposition and stated that to their counsel.

91. Counsel for BYU then did a reverse look up or the like of the numbers.

92. Counsel for BYU thereby discovered Plaintiff s place of work.

93, Counsel for BYU thereby discovered that Plaintiff was a law school student in the Los Angeles area.

94. Counsel for BYU and the members of the conspiracy also initiated an action in federal court have Plaintiff declared a vexatious litigant using many lies and falsehoods, and unsupported by any facts except their conclusory allegations he was vexatious.

95. That motion to hold Plaintiff as a vexatious litigant was also done with the purpose of injuring his chances at being an attorney and practicing law.

96. Plaintiff appealed the issuance of the arrest warrant and the near $3000 sanction.

97. In appealing that Order this Plaintiff filed a motion to proceed in forma pauperis, which listed as his only assets his car worth < $1000 and possibly a near worthless laptop computer, which was made under oath, as being his only assets.

98. Defendant Howard read and approved that motion.

99. In approving that motion Defendant Howard was then aware that Plaintiff had no assets in Utah and the whole need for the supplemental hearing and of 7/19/05 and warrant was rendered moot.

100. Plaintiff appealed that Order to the Utah Court of Appeals who held on Sept. 29, 2005 no final Order existed.

101. A return on warrant hearing was held on August 19, 2005 and BYU missed that hearing.

102. Plaintiff then called the Court and was told by the judge's (Taylor temporarily reassigned during motion of bias) chambers that the warrant had been dropped because no one showed up at the 8/ 19/05 hearing.

103. Based on that information Plaintiff did not further appeal the matter to the Utah Supreme Court.

104. Plaintiff had filed a motion to recuse Defendant Howard which was denied.

105. The case then returned to Defendant Howard who on 2/24/06 refused to rescind the Order. See Exhibit A.

106. In issuing and continuing to allow that arrest warrant to be in power, Defendant Howard acted outside state legal

authority under which the warrant was issued, and in the face of BYU's URPC 3.3 (d) violation, and aware Plaintiff in fact has no Utah property and is homeless and was near penniless.

107. Plaintiff had also sent to BYU, prior to the 7/19 hearing, a URCP rule 11 motion to get them to withdraw the motion which would lead Plaintiff being arrested because URCP 69 did not exist and they violated URPC 3.3 in getting it.

108. BYU ignored it and Plaintiff attempted to file that motion with Defendant Howard who once again monetarily sanctioned Plaintiff for what he believed was a meritless motion. Exhibit A.

109. Defendant Howard acted with religious bias including, but not limited to, (1) allowing BYU to file their opposition to amend the complaint over 2 months passed the standard cutoff date from when the motion to submit for decision was tiled (2) in forcing Plaintiff to pay nearly $3000 to BYU when Plaintiff filed a motion for sanctions resulting from BYU unlawfully removing the state case to federal court where no federal cause of action existed which caused a 1 year prejudicial delay in that case (3) in monetarily sanctioning a second time Plaintiff when he filed a motion to reconsider denial of the motion to amend the complaint based on unlawful removal, the 1 year delay, and the near $3000 monetary sanction (4) monetarily sanctioning Plaintiff a third time for bringing a Rule 11 motion against BYU for their unlawfully obtaining an arrest warrant for Plaintiff based on nonexistent URCP 69 and violating Prof. R. Conduct 3.3 in not informing that court that Plaintiff did not have the money to make it to Utah (5) in issuing and maintaining an arrest

warrant for Plaintiff in a civil case where he is aware that warrant was obtained based on a non-existent statute and in violation of Prof R. Conduct 3.3, and (6) where the Defendant Fred Howard was aware Plaintiff had no property in Utah and was near penniless, and homeless, and (7) allowing BYU to profit from its unlawful removal of the state case and one year delay by denying amendment to the complaint on the basis that it was sought one year late where it could not be sought due to the one year delay, which effectively terminated the case.

110. Counsel for BYU is an officer of the court.

111. Counsel for BYU has an affirmative duty to make disclosures to the court that Plaintiff did not have the monetary means travel to Utah for the hearing.

112. Counsel for BYU has an affirmative duty to make disclosures to the court that URCP 69 upon which they claimed authority for the Order which led to the arrest warrant for Plaintiff that the statue does not exist.

113. Counsel for BYU directed its deceit at the judicial machinery itself

114. Counsel for BYU intentionally made said misrepresentations and omissions.

115. The state court was misled thereby as a result.

116. It is alleged on information and belief that Daniel L. Steele, David M. Kono, R. Willis Orton, and Stephen W. Geary and E1·i'k Davis conspired together regarding the issuing of the arrest warrant for Plaintiff.

117. This conspiracy took place with the intent to give their respective clients advantage in their respective cases against Plaintiff

118. That conspiracy also occurred for long-tern financial gain for Daniel L. Steele, David M. Kono, and R. Willis Orton in gaining a victory in an important court case for high profile clients and would help their respective firms and advancement in those firms.

119. That conspiracy also occurred to specifically with the intent hinder Plaintiff in his access to the state and federal court systems.

120. That conspiracy also occurred to specifically with the intent to hinder Plaintiff and his access witnesses and evidence needed for his state and federal court cases against BYU and the Mormon Church.

121. Bail was set at $500 in place of the arrest warrant.

122. In having an arrest warrant out for Plaintiff where he could not pay the S500 dollar bail that was required, Plaintiff could not attend any hearings for any court cases in Utah and the actions of the defendants and their the conspiracy was with the intent to deny Plaintiff access to the Courts located in Utah.

123. Plaintiff could not appear in any of those court cases as a witness or have his deposition taken, or take depositions and the actions of the defendants and their conspiracy was with the intent to cause Plaintiff to lose the chance to do discovery in Utah that would allow him to win his cases.

124. Plaintiff was in fact hindered in his ability to attend hearings and in his ability to obtain Witness testimony for his court cases as a result of the illegal conduct of defendants; Plaintiff was also precluded from obtaining witness testimony and other evidence in his court cases as a result of that unlawful conduct of defendants in obtaining the arrest warrant and using it to prevent Plaintiff from going to Utah;
defendants conduct amounted to a threat of physical force and injury to prevent him from obtaining evidence.

125. Several separate and distinct acts to effectuate the conspiracy were taken between these defendants.

126. These individuals met to plan their strategy on how to bring to pass the violation of Plaintiffs civil rights in denying him access to the court systems, getting him arrested, and interfering with witnesses in his court cases, interfering with Plaintiffs right to Interstate Travel, and interfering with Plaintiff being a witness in his court cases, and attending any hearings in Utah and giving testimony at any of those hearing that might be required.

127. Defendant Kono also took the step of sending an extortion letter to Plaintiff to get Plaintiff to drop his cases against BYU or face physical threat of arrest by the unlawful warrant they would obtain.

128. Defendant Steele had gone before a state court judge and deceived that judge in getting the Order signed in an ex pane proceeding, based on a non-existent state rule. URCP 69 and in violation of Utah R. Prof Conduct 3.3, which would allow them to get Plaintiff arrested.

129. Defendant Steele and Kono also took steps to further

that conspiracy in attending the 7:19.05 hearing and seeking the arrest warrant of Plaintiff which each were fully informed was being unlawfully obtained.

130. Extortion occurred by the named members of the conspiracy when on 26 May 2005 Defendant Kono sent Plaintiff the email of Exhibit J which used as a threat of force of an unlawful arrest by the unlawfully obtained Order which would lead to Plaintiffs arrest to force or intimidate or coerce Plaintiff to drop his court cases which would result in a loss of substantial monetary gain from the award from
those cases.

131. In getting the 7,19.05 hearing date, and forcing Plaintiff to Utah on that date, where Plaintiff could only make that trip once, Plaintiff was forced to put off his deposition of key witnesses in his case until the last day of discovery and BYU then withdrew the availability of those witnesses causing Plaintiff to not be able to obtain the evidence necessary to win the court case against them where Plaintiff could have done those depositions earlier had BYU not gotten the state
hearing Order.

132. On or about July 2002, Plaintiff had also filed a breach of contract case against BYU in state court alleging breach of the covenant of good faith and fair dealing when BYU police singled Plaintiff out and unlawfully detained Plaintiff on campus as a student in violation of 42 U.S.C. 1983, when he was a student in 2002 and when a student security guard supervised by the BYU police approached one of Plaintiffs former roommates, a friend, and who was taking the same CS46O class and began telling his friend of the many "negative" things that police dispatch had on the

police file concerning Plaintiff. Exhibit L.

133. Those torts by BYU and their police and security created an atmosphere where Plaintiff could not study.

134. For example, the student security guard literally destroyed the friendship of his friend, former roommate, and fellow classmate. It created a lot of anger that the police would have one of their security guards give out damaging information to a classmate and former roommate. That classmate in tum could and perhaps did, tell other students making the classroom and lab experience miserable.

135. The police also published articles in the school newspaper telling the students to use caution around Plaintiff or to avoid him.

136. An article was also published wherein information from the BYU police stated Plaintiff had been arrested for criminal trespassing at BYU, which was false.

137. Plaintiff was also singled out and to be harassed by the BYU police was continually stopped and detained by them under the color of state laws where Plaintiff was on campus like any other fellow student.

138. BYU and Plaintiff had entered into a contract where Plaintiff could take 10 classes for free for next 10 years spring and summer term.

139. Plaintiff felt he was being materially injured as he went to enjoy the fruits of the contract and filed suit. See Exhibit L Complaint.

140. That occurred after years of attempting the BYU administration to remedy the matter.

141. That case was dismissed because the court incorrectly held that the four corners of the contract did not specifically prohibit BYU and security from committing those torts.

142. Plaintiff appealed.

143. Plaintiff forcefully argued that the torts being committed were injuring Plaintiff as he went to enjoy the fruits of the contract citing the correct Utah law precedent, St. Benedict? Dev. Co. v. St. Benedict 's Hosp., 811 P. 2d 194 (Utah 1991) which states that "Under the covenant of good faith and fair dealing, each party impliedly promises that he will not intentionally or purposely do anything which will destroy or injure the other party's right to receive the fruits of the contract.' See Exhibit U Brief at numbered pages 82-96.

144. The Court of Appeals, though needing to take the facts of the complaint as true, could not accept that BYU could commit such torts and completely ignored every fact of any commission of any tort in their opinion.

145. Utah court of Appeals completely ignored Plaintiffs case law that showed he had his case won.

146. Utah Court of Appeals completely ignored Plaintiffs facts ofthe case to make it appear no torts had been committed by BYU.

147. Utah court of Appeals also allowed new, and highly prejudicial "facts" and falsehoods to be raised by BYU for the first time on appeal and remain in the record after

Plaintiff asked that it be taken out.

148. On information and belief the Court of Appeals consists entirely of 7 Mormon church members.

149. Jon Huntsman is governor of Utah and is in charge of selecting the members of the judicial selection committees.

150. That committee makes binding recommendations for judges to fill the vacancies for the judiciary of Utah.

151. Plaintiff alleges that the Court of Appeals actions in completely ignoring the facts of the complaint showing torts committed by BYU, resulted from religious bias in favor of BYU and the Mormon church.

152. The Court of Appeals actions in completely ignoring the case law of that appeal that showed dismissal was improper, resulted from religious bias in favor of BYU.

153, Plaintiff appealed to the Utah Supreme Court. Exhibit P -Docket entry 2.

154. BYU failed to file a timely response to Plaintiffs Petition for Certiorari.

155. BYU filed a response about 22 days late. Exhibit P - Docket entry 5.

156. That response was due on August 29, 2004.

157. That response was filed on Sept. 20, 2004.

158. It was tiled alter the case had been circulated.

159. BYU spoke to Pat Bartholomew the Supreme Court clerk who allowed the late brief and had it directly sent to the Supreme Court justices -22 days late.

160. Based on information and belief, such a late response has never been allowed prior in the history of the Utah Supreme Court.

161. As a result of the allowance of the later response, Plaintiff s writ of certiorari was denied.

162. Pat Bartholomew allowed that late response out of religious bias for BYU and the Mormon church.

163. That late response also contained many false and prejudicial statements.

164. Plaintiff tiled a motion to strike that late brief but the petition was denied.

165. Plaintiff suspects that the motion to strike was not forwarded to the justices.

166. On information and belief it is alleged that the Mormon church has too much influence in the judiciary of Utah due to the judiciary being predominantly Mormon.

167. That has resulted due to the influence of the Mormon church on its members in their view of non-Mormons.

168. That influence results in Mormons mainly selecting Mormons for the judiciary.

169. On information and belief it is alleged that of the 12 judges in the Fourth District where the state cases with

BYU were, Courts covering Utah, Wasatch, Juab and Millard county, 12 of those judges are Mormon.

170. The relative "practicing" Mormon church membership for those counties are about 50%.

171. On information and belief, of the 5 Supreme Court justices of the state, 4 are Mormon.

172. The relative "practicing" Mormom church membership for the state is about 50%.

173. That imbalance can give, and often does give, and has in Plaintiffs cases against BYU, the Mormon church and its affiliate organizations such as BYU an unfair advantage in any court proceeding against them.

174. That imbalance results in a loss of due process of law when the Mormon church and its affiliate organizations are part of any court proceeding against them.

175. That imbalance results in a denial of equal protection of law when the Mormon church and its affiliate organizations are part of any court proceeding against them.

176. That imbalance and entanglement has resulted in a violation of the
establishment clause of the U.S. Constitution.

177. That imbalance and entanglement has resulted in a violation Plaintiffs due process of law rights of the U.S. Constitution.

178. That imbalance and entanglement has resulted in a violation Plaintiff s equal protection of law rights of the

U.S. Constitution Plaintiff does not have access to a fair and impartial tribunal in his cases against BYU.

179. That imbalance and entanglement did give BYU, a Mormon sponsored and controlled school, unfair advantage in the two court cases against them BYU being given procedural and substantive favoritism which other litigants similarly situated do not receive at court.

180. The Mormon church controls the politics of Utah via its members who form the slight majority in the state.

181. The Mormon church holds itself out as the only "true" church in the world.

182. Their members are required to accept that belief.

183. For the Mormon church that belief is not a lofty ideal, but an absolute truth to them.

184. The church and its various organizations are thus believed by its members to be "perfect" as they are supposed to be the only true church and lead by a prophet.

185. Plaintiff does not raise this to criticize in any way their beliefs, but the allege the facts necessary to show the necessary facts for the causes of action.

186. Mormon church members also believe that temple attendance is essential to going to heaven.

187. Faithful members thus must participate in the temple ceremonies.

188. One of those ceremonies requires the Mormon church

member to take a solemn oath and to covenant to give all that they possess, even their own lives if necessary, to defend the "kingdom of God" or Mormon church.

189. In taking that oath, each member must raise right their hand to the square and agree to that oath while bowing their heads.

190. This oath is not spoken of officially outside ofthe temple.

191. Mormon church followers are also taught to take an active role in promoting and building the Mormon church.

192. Mormon church followers also must accept the Mormon church the only true church.

193. The combination of oaths, beliefs, and teachings makes the Mormon church receive favored or differential treatment by Mormon judges.

194. Any court case that accuses the Mormom church or BYU, its school, of wrongdoing would make it difficult for the judge to accept.

195. Any ruling in any court case against the Mormom church or BYU as a defendant of wrongdoing is problematic in light of the temple oath to do all in their power to defend the Mormon church.

196. Any ruling in any court case that accuses the Mormon church or BYU, its school, would also tarnish the reputation ofthe Mormon church and hurt its missionary efforts.

197. Each Mormon Judge in Utah who is faithful and attended the temple has taken that oath.

198. BYU is also controlled by the Mormon church who is their sponsor.

199. It is alleged on information and belief that Defendant Fred Howard is a faithful members of the Mormon church and as such have attended the temple and as a result is thus additionally influenced in the case involving BYU.

200. It is further alleged that this bias has influenced Judge Howard in how he has handled the case, in imposing substantial monetary sanctions on Plaintiff, and in issuing the arrest warrant for Plaintiff.

201. Each member is also aware that their tithes go to support BYU.

202. BYU has often been referred to by its full time church leaders as the "Lord's University".

203. That title is taken literally by the Mormon church members.

204. The Judiciary for the District Court of Utah County is substantially
disproportionately filled with Mormon judges.

205. Because of this disproportionality of Mormon judges and associated bias, Plaintiff is unable to get an impartial hearing or appellate review on any case against BYU.

206. Utah Mormons see former Mormons has having fallen away from the truth and view non-Mormons as incapable of

seeing the truth.

207. This view is perpetuated by church teachings and attitudes.

208. That attitude influences those Mormons are on the state judicial selection committees who select the next judges in Utah.

209. We tolerate democrats picking democrat judges for the judiciary, and republicans doing the same.

210. We might accept that as human nature to pick those whose views and ideals we share.

211. When the judges are then picked along religious lines then that is not proper.

212. On information and belief it is alleged the ratio of Mormons to Mormon Judges is substantially disproportionate to the non-Mormons to non-Mormon Judges in Utah and judges are mostly selected along religious lines.

213. This has created a problem when the Mormon church is a pa1·ty to a state court case causing unfair prejudice to the opposing party.

214. Plaintiff alleges that he has been prejudice by a violation of church and state due to the near impossibility of getting a non-Mormon judge in Utah County and due to the powerful control that the Mormon Church has in the lives of its members in how the view that church.

215. Placing their church members, some who are judges,

under secret oaths to do all in their power to defend the Mormon church creates a conflict of interest that can not easily, and is nearly impossible, to overcome when that judge has that church in their courtroom.

FIRST CLAIM FOR RELIEF
(42 U.S.C. § 1983 Daniel L. Steele, David M. Kono, and Brigham Young University, BENNETT TUELLER JOHNSON & DEERE)

216. Plaintiff incorporates the allegations contained in paragraphs 1 through 215 above as if set forth in full at this point.

217. In unlawfully seeking and obtaining an Order for the arrest of Plaintiff based on a non-existent statute, Defendants Daniel L. Steele, David M. Kono, and Brigham Young University, BENNETT TUELLER JOHNSON & DEERE were acting under color of
state law.

218. Defendants Daniel L. Steele, David M. Kono, and Brigham Young University, BENNEIT TUELLER JOHNSON & DEERE willfully and maliciously violated Utah Rule of Professional conduct 3.3(d) to unlawfully obtain that arrest warrant in not giving out critical information to the judge regarding the ex parte motion being sought that
Plaintiff was homeless and barely had enough money to survive and thus could not make it to Utah for the hearing.

219. Defendants Daniel L. Steele, David M. Kono, and Brigham Young
University, BENNETT TLJELLER JOHNSON & DEERE willfully and

maliciously deceived the state court judge stating that the Order to arrest Plaintiff could be based on URCP 69 when URCP 69 does not exist.

220. In obtaining that unlawful arrest warrant, Plaintiff was deprived of rights privileges and immunities, including the right to interstate travel, the right to attend and participate in judicial proceedings or which he was a part, and obtaining witness depositions.

221. As a result of the deprivation of his civil rights, Plaintiff has suffered injury in his ability to attend, and participate in, and prosecute his state and federal court cases, and his right to interstate travel has been denied in Utah.

222. The acts of Daniel L. Steele, David M. Kono, and Brigham Young
University, BENNETT TUELLER JOHNSON & DEERE were willful and intentional.

223. As a result Plaintiff has suffered extensive damages, in excess of $1 .8 million dollars, the exact amount to be shown at trial.

224. Defendant's actions were the proximate cause of Plaintiffs injury.

225. Defendant Brigham Young University was aware, or reasonably should have been aware of the conduct of their agents in bringing about Plaintiffs injury.

226. Defendant BENNETT TUELLIER JOHNSON & DEERE was aware, or reasonably should have been aware of the conduct of their employees conduct in bringing about

Plaintiffs injury.

227. Both BENNETT WELLER JOHNSON & DEERE and Brigham Young University are liable under the doctrine of respondeat superior for the acts of their named agents or employees.

228. In issuing that unlawful arrest warrant, Plaintiff was deprived of rights privileges and immunities, including the right to interstate travel, the right to attend and participate in judicial proceedings or which be was a part, and obtaining witness depositions.

229. Defendants' acts were under color of state law.

230. Defendants' acted in concert with the state in unlawfully obtaining the arrest warrant.

231. The state was a joint participant with the Defendants in unlawfully obtaining the arrest warrant.

232. As officers of the state court, the defendants additionally qualify as state actors.

SECOND CLAIM FOR RELEIF
(42 U.S.C. § 1985 Daniel L. Steele, David M. Kono, and Brigham Young University, Fred Howard, BENNETT TUELLER JOHNSON & DEERE)

233. Plaintiff incorporates the allegations contained in paragraphs 1 through 232 above as if set forth in full at this point,

234. Defendants took actions to deprive Plaintiff from attending both state and federal court proceedings, from

freely obtaining testimony from witnesses to those court cases and otherwise hindering Plaintiff s quest for justice in those cases.

235. Defendants did that by intimidation of Plaintiff and by threat of having Plaintiff arrested by an illegally obtained and unlawful arrest warrant.

236. Defendants actions were done with the intent to deny Plaintiff the equal protection of the laws, to injure him or his property for lawfully enforcing, or attempting to enforce, the rights of Plaintiff to the equal protection of the laws;

237. Defendants did conspire to deny Plaintiff equal protection of laws, to intimidate Plaintiff into giving up legal rights he was entitled to under the U.S. Constitution,,and to deprive Plaintiff of the right to attend his state and federal court proceedings, and from freely obtaining testimony from witnesses for those court cases.

238. Defendants did conspire to deny Plaintiff of having and exercising any right or privilege of a citizen of the United States.

239. Defendants did take steps to carry out each of the named conspiracies.

240. Defendants acts were done under color of state law;

241. Defendant's actions were the proximate cause of Plaintiffs injury.

242. As a result of Defendant's acts, Plaintiff has been injured in being deprived rights, liberties and immunities

guaranteed him under the Federal Constitution.

243. Plaintiff has been injured in his ability to prosecute his state and federal court cases, in not being able to attend legal proceedings and in not being able to obtain the necessary witness testimony to prevail in those court cases.

244. Defendant Brigham Young University was aware, or reasonably should have been aware of the conduct of their agents in bringing about Plaintiffs injury.

245. Defendant BENNETT WELLER JOHNSON & DEERE was aware, or reasonably should have been aware of the conduct of their employees conduct in bringing about Plaintiffs injury.

246. Both BENNETT TUELLER JOHNSON at DEERE and Brigham Young University are liable under the doctrine of respondeat superior for the acts of their defendant agents or employees.

THIRD CLAIM FOR RELEIF
(RICO .18 U.S.C. § 1961 et. Seq. Daniel L. Steele, David M. Keno,
Brigham Young University, BENNETT TuELt4En JOHNSON at DEERE)

247. Plaintiff incorporates the allegations contained in paragraphs 1 through 246 above as if set forth in full at this point.

248. 18 U.S.C. § 1961(1) (B), .§ 1503 Obstruction of Justice. Defendants, by use of the force of the unlawfully and comlptly obtained arrest warrant, sought to influences, obstructs, and impede, and did obstruct and impede the due

administration of justice

249. Defendants by use of an email communication attempted to INTIMIDATE Plaintiff to drop his due process of law rights in dropping his valid court cases against defendants, or to face an unlawful arrest by a warrant that was illegally obtained.

250. Defendants did conspire to deny Plaintiff his due process of law rights and to interfere with the lawful administration of justice.

251. Defendants did take steps to iurther that conspiracy and did take multiple steps to do so.

252. Defendants intended to become members of the conspiracy.

253. Each Defendant joined with the other members of the alleged conspiracy in an agreement to conduct or participate in the affairs of the enterprise through a pattern of racketeering activity.

254. Each Defendant understood the nature or unlawful character of the
conspiratorial plan and were aware of the existence and purpose of the enterprise.

255. Each Defendant agreed that the enterprise would be conducted through a pattern of racketeering activity.

256. Defendant's actions were the proximate cause of Plaintiffs injury.

257. As a result of Defendant's acts, Plaintiff has been

injured in being deprived rights, liberties and immunities guaranteed him under the Federal Constitution.

258. Plaintiff has been injured in his ability to prosecute his state and federal court eases, in not being able to attend legal proceedings and in not being able to obtain the necessary witness testimony to prevail in those court cases.

259. Defendant Brigham Young University was aware, or reasonably should have been aware of the conduct of their agents in bringing about Plaintiffs injury.

260. Defendant BENNETT TUELLER JOHNSON & DEERE was aware, or reasonably should have been aware of the conduct of their employees conduct in bringing about Plaintiffs injury.

261. Both BENNETT TUELLER JOHNSON & DEERE and Brigham Young University are liable under the doctrine of respondeat superior for the acts of their defendant agents or employees.

FOURTH CLAIM FOR RELEIF
(Common Law Extortion Daniel L. Steele, David M. Kono, Brigham Young University, BENNETT TUELLER JOHNSON & DEERE)

262. Plaintiff incorporates the allegations contained in paragraphs 1 through 261 above as if set forth in full at this point.

263. Defendants have used the threat the use of physical force of an·est by what would become an illegally obtained arrest warrant and to extort Plaintiff into dropping his legal proceedings against defendant BYU.

264. Defendants stood to gain something of extreme value, including the dropping of the legal cases, and including attendant monetary awards for damages from those cases.

265. Defendants' acts were intentional.

266. Defendant's actions were the proximate cause of Plaintiffs injury.

267. As a result of Defendant's acts, Plaintiff has been injured in being unlawfully intimidated, and is threatened with a deprivation of his liberties of freedom and to be free from unlawful arrest.

268. Defendant Brigham Young University was aware, or reasonably should have been aware of the conduct of their agents in bringing about Plaintiff s injury.

269. Defendants BENNETT TUELILER JOHNSON & DEERE were aware, or reasonably should have been aware of the conduct of their employees conduct in bringing about Plaintiffs injury.

270. Both BENNETT TUELLER JOHNSON & DEERE and Brigham Young University are liable under the doctrine of respondeat superior for the acts of their defendant agents or employees.

FIFTH CLAIM FOR RELEIF
(42 U.S.C. § 1983 Violation of Separation of church State 1st Amend. -
Governor Jon Huntsman, Judge Fred Howard)

271. Plaintiff incorporates the allegations contained in

paragraphs 1 through 270 above as if set forth in full at this point.

272. Jon Huntsman is governor of Utah and is in charge of selecting the members of the judicial selection committees who make binding recommendations for judges to till the vacancies for the judiciary of Utah.

273. Selection committees have shown a pattern of selecting mainly Mormon judges to fill vacancies.

274. That selection process is done predominantly on religious lines.

275. That process has resulted in Utah judges being substantially Mormon where the actual religious make up of Utah is about 50% Mormon.

276. That selection process has created a judicial system where Mormon
sponsored and affiliated organizations receive differential treatment from those Mormon judges.

277. Mormon Judges who are faithful must accept the Monnon church as being the only true church in the world and thus as representing the Lord in its actions and those Judges also are given a life long calling to promote and build the Mormon church.

278. Mormon also must attend the temple and there take an oath to defend Mormonism.

279. BYU is a Mormon affiliated institution and has been given differential treatment by the judiciary as a result of the judiciary being composed almost entirely of LDS

judge's. which has resulted in and interference with the due process of law administration of justice in Utah.

280. Defendants acts were done under color of state law;

281. Defendant's actions were the proximate cause of Plaintiffs injury.

282. As a result of Defendant's acts, Plaintiff has been injured in being deprived rights, liberties and immunities guaranteed him under the Federal Constitution and a denial of the equal administration of law, and the right to due process of law as a result of excessive entanglement of religion.

SIXTH CLAIM FOR RELEIF
(Fraud upon the State Court)

283. Plaintiff incorporates the allegations contained in paragraphs 1 through 282 above as if set forth in full at this point.

284. Counsel for BYU and BYU obtained an arrest warrant for Plaintiff through unlawful and deceitful means.

285. Counsel for BYU is an officer of the court.

286. Counsel for BYU has an affirmative duty to make disclosures to the court that Plaintiff did not have the monetary means travel to Utah for the hearing.

287. Counsel for BYU has an affirmative duty to make disclosures to the court that URCP 69 upon which they claimed authority for the Order which led to the arrest warrant for Plaintiff that the statue does not exist.

288. Counsel for BYU and BYU intended to deceive the state judge.

289. Counsel for BYU directed its deceit at the judicial machinery itself

290. Counsel for BYU intentionally made said misrepresentations and omissions.

291. The state court was misled thereby as a result.

292. Defendants' acts were purposeful or grossly reckless.

293. Defendant was aware, or reasonably should have been AWARE of the harm that would be caused to Plaintiff.

294. Defendant was aware, or reasonably should have been aware, of the unlawful nature of their conduct.

295. Defendant acts have injured Plaintiff in denying him access to the state of Utah, limiting his ability to obtain needed testimony in those cases, and to appear at any of the hearing for those cases.

296. Defendant acts were the proximate reason for Plaintiffs injury.

297. Defendant Brigham Young University was aware, or reasonably should have been aware of the conduct of their agents in bringing about Plaintiffs injury.

298. Defendants BENNETT TUELLER JOHNSON & DEERE were aware, or reasonably should have been aware of the conduct of their employees conduct in bringing about

Plaintiffs injury.

299. Both BENNETT TUELLER JOHNSON & DEERE and Brigham Young University are liable under the doctrine of respondeat superior for the acts of their defendant agents or employees.

SEVENTH CLAIM FOR RELEIF
(42 U.S.C. § 1983 Equal Protection I4"' Amendment, Process for Issuing Arrest Warrant Denies Equal Access To Courts)

300. Plaintiff incorporates the allegations contained in paragraphs 1 through 299 above as if set forth in full at this point.

301. The process in the state of Utah by which a person is arrested or has an arrest warrant issued for them for not attending a state civil hearing to which they are a party violated the U.S. Constitution.

302. A person from out of state having insufficient means to attend in person a state civil bearing is automatically arrested or has an arrest warrant issued from them when they do not attend the hearing.

303. Access to the court system must be available to those of poverty.

304. Plaintiff was unable to attend a state civil hearing due to his poverty and is under threat of arrest as a result.

305. The equal protection clause ofthe 14* amendment requires that persons of poverty be treated equally and fairly before a state court system.

306. The denial of equal protection of laws was the proximate cause of the Plaintiff" s injury.

307. Plaintiff stands to be injured by the lack of due process of law in the future.

EIGTH CLAIM FOR RELEIF
(42 U.S.C. § 1983 Due Process - I4"' Amendment, Process for Issuing Arrest Order Issued In Violation of Due Process)

308. Plaintiff incorporates the allegations contained in paragraphs 1 through 306 above as if set forth in full at this point.

309. The process in the state of Utah by which a person is arrested or has an arrest warrant issued for them for not attending a state civil hearing to which they are a party violated the U.S. Constitution.

310. A person can be arrested or have an arrest warrant issued for them ex parte without ever being given the chance to be heard prior to the Order which would lead to their arrest is issued.

311. Due process of law mandates that both sides be heard prior to a deprivation of their liberty.

312. Plaintiff was never given a chance to respond prior to the Order which would lead to his arrest being issued and to be heard relative to its merits.

313. Due process of law of the I4'*' amendment requires that persons be heard and to deprive them of liberty or

property prior to being heard violated the 14th amendment.

314. The denial of clue process of law was the proximate cause of the Plaintiff s injury.

315. Plaintiff stands to be injured bythe lack of due process of law in the fixture.

NINTH CLAIM FOR RELEIF
(42 U.S.C. § 1983 Due Process - I4"' Amendment, Arrest Order Void
On Its Face, Issued Outside any Legal Authority)

316. Plaintiff incorporates the allegations contained in paragraphs 1 through 282 above as if set forth in full at this point.

317. The arrest Order issued for Plaintiff is void on its face having been issued pursuant to URCP 69 which does not exist; the motion which sought the arrest warrant and order which would lead to that arrest relying on URCP 69 and being part and parcel of the Order leading to that arrest warrant.

318. That Order being void is subject to collateral attack on due process and equal protection grounds.

319. The Order issued which led to the arrest warrant is not anywhere supported by the U.S. Constitution and is also thus void.

320. That Order was issued out of malice and is still being pursued to harass Plaintiff and is sought and maintained in bad faith.

321. Defendant Howard has a notarized affidavit disclosing that Plaintiff has no property in Utah and little property in California.

322. Defendant Howard is also that URCP 69 does not exist and that the ex parte motion would enable the arrest warrant to be sought by BYU was obtained in violation of 3.3 of the rules of professional conduct.

323. The Order requiring Plaintiff to pay some $4748 in sanctions is flagrant, was issued out of malice, and to harass Plaintiff and done in bad faith.

324. Defendant Howard's actions are the proximate cause of Plaintiff' s injury.

ON PLAINTIFF'S FIRST, SECOND, THIRD, FOURTH, SIXTH CLAIM FOR RELEIF

1. For Damages of $ 1 ,850,000 against jointly and severably against Brigham Young university; Daniel L. Steele, David M. Kono, and BENNETT TUELLER JOHNSON & DEERE.
2. For costs of suit;
3. For punitive damages.
4. For such further relief as the Court deems proper under the circumstances.

ON PLAINTIFF'S FIFTH CLAIM FOR RELEIF

1. For a writ of mandate to Judge Fred Howard that the arrest warrant for plaintiff be rescinded. For a writ of mandate to Judge Fred Howard that the $4700 sanction against Plaintiff be rescinded
2. For a writ of mandate to Governor Jon Huntsman that prudent steps be taken to form judicial selection committees

that are (l) instructed to select judges not based their religious affiliation and (2) that the religious Mormon composition of the judiciary show signs of progress reflecting the Mormon composition of the citizenry.
3. For costs of suit;
4. For such further relief as the Court deems proper under the circumstances.

ON PLAINTIFF'S SEVENTH, EIGTH CLAIM FOR RELEIF
1. For a declaratory judgment that the process by which a person is required to attend a supplemental hearing in a civil case as a result of an ex parte hearing which they did not attend and were given no notice of then arrested or issued a warrant for their arrest in Utah for failure to attend a supplemental civil heating violates the U.S. Constitutions due process and equal protection clauses.
2. For costs of suit;
3. For such further relief as the Court deems proper under the circumstances.

ON PLAINTIFF'S NINTH CLAIM FOR RELEIF
1. That the warrant for Plaintiffs arrest be enjoined for being void on its face and violative of Plaintiffs due process and equal protection rights. and for being unsupported by any allowances of the U.S. Constitution; that the $4700 sanction against Plaintiff be enjoined.
2. For costs of suit;
3. For such further relief as the Court deems proper under the circumstances.

DATED this August 13. 2006.
/s

Aaron Raiser

Amended Complaint Exhibit A (Non-pertinent parts taken out due to time - cost – space constraints for the petitioner for writ of certiorari)

Fourth District Court – Provo Utah County, State of Utah

Aaron Raiser v. BRIGHAM YOUNG UNIVERSITY

Case Number 020403629

***

8-26-02 Case Filed

***

05-13-05 Judgment Entered

Creditor: BRIGHAM YOUNG UNIVERSITY

Debtor: Aaron Raiser

2,792.75 Total

***

05-23-05 Supplemental Hearing Ordered

Judge Fred Howard, Hearing Date July 19, 2005.

6-1-05 Notice of Appeal

6-6-05 Affidavit and Application for Waiver of Court Fees Approved Judge Fhoward

***

7-19-05 Minute Entry - Minute Entry For Supplemental Hearing Judge Fhoward

Plaintiff Aaron Raiser fails to appear, Mr. Kono requests a Bench Warrant, The Court authorizes and signs a civil bench warrant. $500 cash bail. Returnable August 19, 2005 at 8:30 am before Judge Taylor.

***

2-24-06 Minute Entry for Oral Argument

Plaintiff fails to appear, *** The Court also notes that Plaintiff has filed a Motion to rescind the Order of Arrest which has not been submitted to the court for decision. The court has read the motion and hearby denies it. ***

Amended Complaint Exhibit B (Ommitted due to time - cost – space constraints for the petitioner for writ of certiorari)

Amended Complaint Exhibit C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION
CIVIL NO. *2:04-CV-896*

T.G., PLAINTIFF,
VS.
THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS AND BRIGHAM YOUNG UNIVERSITY, DEFENDANTS.

APRIL 19, 2005 SALT LAKE CITY, UTAH

ALL PENDING MOTIONS BEFORE THE HONORABEL TENA CAMPBELL UNITED STATES DISTRICT JUDGE

APPEARANCES

FOR THE PLAINTIFF:
T.G [Aaron Raiser]

FOR DEFENDANT CHURCH:

KIRTON & MC CONKIE
BY: R. WILLIS ORTON, ESQ. STEPHEN W. GEARY, ESQ. 60 EAST SOUTH TEMPLE, #1800
P.O. BOX 45120 SALT LAKE CITY, UTAH 84145-

0120

FOR DEFENDANT B.Y.U.:

BENNETT TUELLER JOHNSON & DEERE BY: DANIEL L. STEELE, ESQ. 3865 SOUTH WASATCH BLVD., SUITE 300 SALT LAKE CITY, UTAH 84109

(801) 272—5600

COURT REPORTER:

RAYMOND P. FENLON 350 SOUTH MAIN STREET, #242

SALT LAKE CITY, UTAH 84101 (801) 809—-4634

PROCEEDINGS

APRIL 19, 2005 3:00 P.M.

THE COURT: PLAINTIFF, YOU CAN HEAR ME, AM I CORRECT?

THE PLAINTIFF: YEAH, I CAN HEAR YOU OKAY.

THE COURT: ALL RIGHT. WE'RE HERE IN T.G., WHICH IS NOT A CORRECT NAME BUT IS A NAME THAT HAS BEEN PLACED ON THE PLEADINGS, VERSUS THE CHURCH OF JESUS CHRIST AND B.Y.U., HERE ON ASSORTED MOTIONS. REPRESENTING THE DEFENSE IS MR. STEELE FOR B.Y.U., MR. GEARY AND MR. ORTON FOR THE CHURCH. ***

THE COURT: *** ALL YOUR DISCOVERY MUST BE COMPLETED NO LATER THAN JULY 19TH, 2005. THIS DISCOVERY WILL CONSIST ONLY OF THE DEPOSITIONS OF MR. DAVIS, THE DEPOSITION OF MR. BRAMHALL AND THE DEPOSITION OF DAN TOWSEY.

MR. ORTON: CLARIFICATION, YOUR HONOR. IS THAT ORAL DEPOSITION? ***

THE COURT:: I BELIEVE, PLAINTIFF, WE NEED TO DO IT BY ORAL DEPOSITION, WHICH WOULD REQUIRE THAT YOU TRAVEL HERE ***

THE PLAINTIFF: PART OF THE PROBLEM IS RIGHT NOW I'M UNDER SEVERE FINANCIAL CONSTRAINTS. TO BE HONEST, I AM HOMELESS, YOUR HONOR, AND I AM UNDER SEVERE CONSTRAINTS JUST TO FIND ENOUGH MONEY TO GET ENOUGH FOOD FROM DAY TO DAY. SO IT'S GOING TO BE DIFFICULT FOR ME TO TRAVEL. I WOULD PREFER TO BE ABLE TO DO THIS JUST BY WRITTEN INTERROGATORIES, ETCETERA, OR PERHAPS BY PHONE. BUT I'D RATHER DO THIS BY WRITING. *** (CONCLUDED AT 3: 35 P.M.)

Amended Complaint Exhibit D (Ommitted due to time - cost – space constraints for the petitioner for writ of certiorari)

Amended Complaint Exhibit E (Edited/Reduced due to time - cost – space constraints for the petitioner for writ of certiorari)

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY, STATE OF UTAH

AARON RAISER,
Plaintiff

vs.

BRIGHAM YOUNG UNIVERSITY,
Defendant,

Civil No.: 020403619

Judge Fred D. Howard

Ruling Re: Defendant's Motion for Reconsideration or Releif from Ruling

The matter comes before the court on Defendant's Motion for Reconsideration or Releif from Ruling. The Court having reviewed the file and being fully advised in the premeses, hereby issues the following:

***

The court finds defedant's decision to remove this case to federal court was not done with improper motive or

without basis in law. The the federal court decided reached a different conclustion than defendant or declined to excersie its supplemental jurisdiction does nto support a conclustion that Defendant violated Rule 11. Therefore the court respectfully denies Plaintiff's motion for sanctions.

In response to Plaintiff's motion for sanctions Defendant contends it should be awarded attorney's fees pursuant to Rule 11 *** Moreover, the court finds Plaintiff's motion is frivolous because it is unsupported by any authority. Plaintiff's motion merely delayed the proceedings and was an attempt to harass defendants and increase the cost of the litigation. The court grants defendant's motion for sanctions***.

By The Court:

s/ _____

Judge Fred Howard

Amended Complaint Exhibit H –
Petitieonr/Plaintiff's motion for sanctions

Aaron Raiser, Pro Se
7084 N. Cedar Ave. #103
Fresno. Ca 93720

In The Utah Fourth District Court
Aaron Raiser
Plaintiff
v.
Brigham Young University
Defendant

Civil No. 020403619
motion for sanctions for unnecessary delay
Judge: 4

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Plaintiff motions for sanctions for unnecessary delay against the defendant.

Defendants decided to remove the case to federal court. However, the case was not removable. This tactic by the defendant then delayed the case in federal court for over a year giving them valuable time to lose their witnesses and documentation supporting plaintiffs case.

According to 28 U.S.C. 1441 only cases that could have been originally brought in federal court are removable. That this case was not removable is shown prima facie. It does not state a federal claim and no diversity exists.

The defendant was aware of this and has misused the removal process to gain advantage in the case by causing a delay. The delay has been over 1 year caused by them and plaintiff has lost opportunity for evidence as witnesses have either moved or forgotten or documents lost.

Plaintiff asks that appropriate sanctions be permitted and asks for $40,000 if appropriate or any lesser amount deemed proper under the circumstances.

DATED June 3, 2004.
Aaron Raiser

Amended Complaint Exhibit I1 – BYU Ex Parte Motion For Hearing Arrest if Petitioner did not attend.

ORDER

THE STATE OF UTAH TO PLAINTIFF AARON RAISER: IT IS HEREBY ORDERED that, pursuant to the foregoing Motions and good cause appearing, you appear in person before this Court at the time and place shown below to answer questions, under oath, concerning your property

Date: July 19, 2005 Time: 8:45 an.

Place: Fourth District Court
Utah County
125North 100 West
Provo, Utah 84601

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending the hearing.

If you have been personally served with this Order and you fail to appear, the Court may order a Warrant for your arrest.

DATED this 23 day of May, 2005.

s/_____
Judge Fred Howard

Amended Complaint Exhibit 12 – BYU Ex Parte Motion For Hearing Arrest if Petitioner did not attend.

Daniel L. Steele (6336)
David M. Kono (8770)
BENNETT TUELLER JOHNSON & DEERE
3865 South Wasatch Blvd., Suite 300
Salt Lake City, Utah 84109
Telephone No.: 801-272-5600
Facsimile No. : 801-2781541

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY, STATE OF UTAH

AARON RAISER,
Plaintiff

vs.

BRIGHAM YOUNG UNIVERSITY,
Defendant,

Civil No.: 020403619

Judge Fred D. Howard

MOTION AND ORDER FOR SUPPLEMENTAL PROCEEDINGS

Defendant Brigham Young University, by and through its undersigned counsel and pursuant to Rule 69 of the Utah Rules of Civil Procedure, hereby moves the Court for an Order requiring Plaintiff Aaron Raiser to appear

before this Court to answer questions, wider oath, concerning his property, and to restrain Plaintiff from disposing of, transferring, selling or conveying any of his non-exempt property which he owns or controls pending the hearing.

This Motion is based on the files and records in the above-entitled action, which reflect that on the day of May, 2005, Defendant registered a Judgment against Aaron Raiser of the above-captioned case. A copy of the Judgment is attached hereto as Exhibit A and incorporated herein by this reference, The Judgment has not been satisfied.

DATED this 24 Day of May, 2005
BENNETT TUELLER. JOHNSON & DEERE

David Kono
Attorneys for Defendant
Plaintiffs Business Address:

Aaron Raiser
7121 Carlson Circle [Del Taco]
Canoga Park, CA 91303
(818) 346-8167

Amended Complaint Exhibits J,K,L ommitted due to time/space/cost constraints.

Appendix G – Utah District Court Order Deny Removal – Finding violation of 28 U.S.C. § 1446(a) by BYU

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

AARON RAISER.
Plaintiff,
vs.
BRIGHAM YOUNG UNIVERSITY, and PROVO CITY,
Defendants.

Case No. 2:02-CV-975

ORDER

This matter is before the court on Defendant Brigham Young University's ("BYU") motion to consolidate and notice of removal. Defendant filed a notice of removal of two state court cases that allegedly contain the same factual allegations and the same parties as this case. The state court cases are:

Raiser v. Brigham Young University. Civil No. 020403144
Raiser v. Brigham Young University. Civil No. 020403619

28 U.S.C. § 1446(a) states that: "A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States in the district and division within which such action is pending a notice of

removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action." 28 U.S.C. § 1446(a).

A defendant seeking to remove a ease from state court to federal court under 28 U.S.C.A. § 1446 must (I) file a notice of removal with the appropriate federal court, (2) promptly file a copy of the notice with the clerk of the state court. and (3) promptly give written notice of the removal to all adverse parties." Farm Credit Bank of St. Paul v. Rub, 481 N.W. 2d 451, 455 (N.D. 1992) (citing 14A Wright, Miller& Cooper, Federal Practice & Procedure: Jurisdiction 2d § 3730 (1985)).

It appears that Defendant has not filed a copy of the Notice of Removal with the clerk of the state court, and therefore, the Notice of Removal is procedurally deficient. Moreover, removal is improper in this case because the court lacks subject matter jurisdiction over the state court actions. "In general. and of cardinal importance, an action is removable from a state court to a federal court only if it might have been brought in the latter originally." 14A Wright. Miller & Cooper. Federal Practice & Procedure: Jurisdiction 3d § 3721. "This requirement that all of' the conditions for original jurisdiction must be satisfied before removal will be allowed has been enforced in innumerable cases by courts at all levels of the federal judiciary." Id.

Defendant asserts that this court has jurisdiction over the state court cases pursuant to 28 U.S.C. § 1441(c).

Specifically. Defendant contends that although the state court cases do not involve a federal question, they are subject to the court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a), and are removable pursuant to 28 U.S.C. § 1441(c).

28 U.S.C. § 144 1(c) states: "Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates."

Here, Defendant has failed to join the non-removable state claims with a cause of action within the jurisdiction of this court conferred by 28 U.S.C. § 1331. Simultaneously consolidating the state court claims with an existing federal court case is insufficient to meet the requirements of 28 U.S.C. § 1441(c). Accordingly, Defendant has failed to establish that this court has original jurisdiction over the state court actions, and therefore, removal is improper.

Defendant's notice of removal is DENIED. Defendant's motion for consolidation is DENIED as moot.

DATED this 27 day of September, 2002.

BY THE COURT:

TENA CAMPBELL

United States District Judge
Appendix H – Petition for Rehearing in the Tenth Circuit, United States Federal Court

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 06-4243

Aaron Raiser,
Appellant,

v.

David M. Kono et. al.

No Oral Argument Requested

Appeal from the District Court of Utah

Petition for Panel Rehearing

Aaron Raiser, Pro Se
20058 Ventura Blvd. #113,
Woodland Hills, CA 91364

Pursuant to Rule 40 Appellant Petition for Panel Rehearing of the Order & Judgment (Opinion) of Appendix A. BYU, DAVIDKONO; DANIEL STEELE; BENNETT TUELLER JOHNSON & DEERE object to the motion; FRED HOWARD has not responded to a position request, JON HUNTSMAN objects.

I. Disallowance of Reply Brief Improper

Congress has mandated that each litigant in this Court be given the chance to file a Reply Brief. Fed. R. App. Proc. 28 states:

(c) Reply Brief. The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities – cases (alphabetically arranged), statutes, and other authorities – with references to the pages of the reply brief where they are cited.

On 7/5/07 this court entered an order permitting a motion by BYU et. al. to file a Response Brief. However, on the same day, this court entered the Order & Judgment in the appeal, without leaving any chance for Appellant to file a Reply Brief as prescribed by Rule 28. See Order & Judgment at 11. For these reasons the Order & Judgment must be vacated to allow for compliance with Rule 28 to allow a Reply Brief prior to deciding the appeal.

***

IV.

Jon Huntsman

The claim against governor Huntsman is rejected on lack of

standing grounds. Opinion at 6-7. That there is a violation of the Establishment Clause is not contested. That there is an actionable injury resulting from that violation is neither disputed. The sole issue is that that relief sought is claimed to be "speculative".

A. Taxpayer Standing The Supreme Court in Flast v. Cohen, 392 U. S. 83 stated that in Establishment Clause cases, which the claim involves, that the standard Article III standing requirements of an (1) injury (2) traceable to the defendant and (3) some form of relief capable of being given. See Allen v. Wright, 468 U. S. 737, 751 (1984). Appellant should have taxpayer standing in this case as a state taxpayer and possibly as a federal taxpayer if any federal funds are used to support the Utah Judicial system. Appellant would ask that the case be remanded to the lower court to develop the facts and the law in this respect. Also, an opportunity to amend the complaint to allege the necessary facts would be proper as the entire issue is raised for the first time by this court in its opinion affirming dismissal. Certainly, if the outcome on this claim hinges upon whether state taxpayer standing can be invoked in an analogous manner to Flast, the case is not "patently obvious" that it does not state a claim for relief.

B. Capable of repetition, Avoiding review The capable-of-repetition doctrine can be invoked in cases where a constitutional deprivation has occurred yet where redress for that deprivation can not be given due to the length of time it takes for the courts to adjudicate a matter. Where there is a "reasonable showing that [a plaintiff] will again be subject to the alleged illegality" the capable-of-repetition doctrine applies. City of Los Angeles v. Lyons, 461 U.S. 95, 109 (1983) (citing DeFunis v. Odegaard, 416 U.S. 312, 319 (1974)).

In Murphy v. Hunt, 455 U.S. 478, 482 (1982) the Supreme Court stated:
In Weinstein v. Bradford, 423 U.S. 147, 149 (1975) (per curiam), we said that "in the absence of a class action, the `capable of repetition, yet evading review' doctrine was limited to the situation where two elements combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." Citing Elections Bd. v. Socialist Workers Party, 440 U.S. 173, 187 (1979) .

See Murphy at 482 (per curiam).

In the instant case, the Appellant has had no opportunity to make any showing at all with respect the existence of future lawsuits against an LDS Church related institution. This court's own records should show a history of litigation between the Appellant and BYU and the LDS church. If the past is any indication of the future there is the likelihood of future litigation between the parties. Appellant can show on remand that BYU is in breach of a settlement agreement/contract and that Appellant can file a state case arising out of that breach, which appears to be continual up until 2010, up until 2016. See Utah Code Ann. § 78-12-23 (2002) (setting statute of limitations for breach of written contract claims at six years). See also attached Declaration of Appellant. In the last 5 years there have been 4 new judges assigned to the Fourth District court in Utah where BYU resides. See Declaration of Appellant.
Thus 8 years should be sufficient for the judicial nominating committee to nominate at least one non-LDS judge to that District. At least then there would be one

judge available to hear that case. Thus there is in fact a reasonable likelihood that the relief sought can in fact redress the injury. Importantly, this demonstrates the need for fact finding and that opportunity should be given. This Court should not assume that those facts don't exists without giving some opportunity to present them. Thus remand to the district court would be the best manner to handle the case to allow the facts and the law to be developed.

C. Class Representation In Murphy v. Hunt, 455 U.S. 478, 482 (1982), a case where the capable-of-repetition doctrine was denied, the Supreme Court also indicated that had the petitioner sought to represent a class of injured persons, the case would have been actionable. See Id. at ("The question was no longer live because even a favorable decision on it would not have entitled Hunt to bail [redress of the injury]. For the same reason, Hunt no longer had a legally cognizable interest in the result in this case. He had not prayed for damages nor had he sought to represent a class of pretrial detainees.")(emphasis added).

Appellant has had no opportunity to seek to represent a class of litigants in a similar predicament in Utah (obviously this would require obtaining counsel, which could be done). Thus remand would be proper to allow Appellant to amend the complaint and be given the opportunity to obtain counsel and represent a class of similarly situated litigants in Utah.

Another possibility would be to join or with counsel represent a type of revolving class, where while Appellant's state court case might terminate prior to a resolution in federal court, another litigant with a case against a Church related institution could join that class as a case

arose. An opportunity to amend the complaint along those lines should also be given, along with the chance to show via discovery that such a class would be viable in federal court.
An opportunity to develop the facts and law necessary to show standing should be given and remand would be proper.

D. In FN3 of the Opinion the Court, cites to In re McCarthey, 368 F.3d 1266, 1270 (10th Cir. 2004), then notes: '
.. "merely because [a judge] belongs to and contributes to the Mormon Church would never be enough to disqualify him."; ...' This Court fails to distinguish between the facts of the case at bar, and the facts as found in In re McCarthey.
The supporting factual allegations in McCarthey are different. The facts supporting the religious judicial bias allegations in McCarthey were based on (1) financial contributions to the Mormon church (2) past dealings with Mormon Church leaders.
The instant appeal however alleges (1) that Mormon judges, as part of their religion, must accept the LDS church as the only "true" church and is thus "perfect". That presents a problem when either the Mormon church or one of its organizations like BYU which is held as a matter of belief to be the Lord's University is accused of wrongdoing. (2) Mormon judges would be reluctant to enter an unfavorable ruling against a Mormon organization as it would make them look bad and hurt the church's missionary program, which they must take an active part. (3) Mormon judges attend the temple and there take a solemn oath to defend the Mormon Church. See Amended Complaint ¶¶181-209.

No reference to religion is needed with respect to the issue of bias. Anytime a judge has taken an oath to defend one of the litigants in its court, that is grounds for disqualification. The issue is that of the 12 judges in the judicial district in which BYU is located, 12 are Mormon. Of the 7 court of appeals judges, 7 are Mormon. In other words, there is a basis for church / state Entanglement as alleged in the complaint and sufficient facts to support that allegation.

V.

Kono, Steele, Bennett, Tueller, Johnson & Deere, BYU A. 42 U.S.C. § 1983 The §1983 claim does not in any way allege a conspiracy between Kono, Steele, Bennett, Tueller, Johnson & Deere, BYU and judge Howard. See Opinion at 7 (alleging a conspiracy was alleged to support the §1983 claim). Nowhere does judge Howard's name appear in any manner in the §1983 claim.

Appellant showed in the opening brief that there is a basis in law and fact that Kono, Steele, Bennett, Tueller, Johnson & Deere, BYU and can be considered state actors when acting in concert with a state judge.

Appellant points out that a typographical oversight was made under the defendant name appearing in the §1985 claim, where judge Howard does show up inside the parenthesis under the second claim for relief yet is not mentioned by name in any factual allegation of that claim. That type of mistake would have been caught at briefing in the district court and would have been easily corrected by amendment of the complaint. That it is a typographical oversight is also evidenced by the relief sought for that claim. Appellant nowhere seeks any type of relief against judge Howard.

Appellant showed in his Brief on Appeal at 14-16 a factual

and legal support for a §1983 for the violation of Utah Rules of Prof. conduct 3.3. Also, because the §1983 claim does not claim a conspiracy between judge Howard and the other defendants for that claim, the is a factual error for affirmaning dismissal.

B. §1985 Claim Had the defendants not violated Utah Rule of Professional Conduct 3.3 in obtaining the arrest warrant, this Court's ruling would not be questioned and in Appellant is aware no actionable claim would exist for RICO, §1985 or §1983.

The issue of fact that creates an actionable claim for either RICO, §1985 or §1983 is that the defendants violated Utah Rule of Professional Conduct 3.3 in obtaining the arrest warrant. That the defendants conspired together to violate Appellant's rights to access to the courts, obtain witness testimony, interstate travel, attend court hearings is not challenged. This creates an issue of fact for the district court as to the purpose of the conspiracy, and sufficient facts exists to show that the purpose was to obstruct or hinder Appellant's rights to access to the courts, obtain witness testimony, interstate travel, attend hearings and the like.

The Opinion at 9 states "legal claims possessing a reasonable basis in law and fact simply do not constitute the 'force or intimidation' necessary to satisfy § 1985(2)." Timmerman v. U.S. Bank, N.A., 483 F.3d 1106, 1124 (10th Cir. 2007). However, Timmerman involved U.S. Bank being countersued by Timmerman for "civil theft, conversion, unjust enrichment, conspiracy, aiding and abetting a breach of fiduciary duty, and fraudulent misrepresentation" when Timmerman sued for wrongful discharge after giving fellow employees improper credits to their bank accounts in violation no bank policy. Here, the facts differ, as this action centers around the defendants

violating Utah Rule of Professional Conduct 3.3 to obtain an arrest warrant for the purpose of violating Appellant's rights to access to the courts, obtain witness testimony, interstate travel, and to attend court hearings.
With respect to this court's assertion that the warrant for arrest was lifted on August 19, 2005, that is not accurate or correct. The complaint does not state that it was lifted on that date. It does state that the judge's secretary - who had been reassigned the case temporarily – verbally told Appellant that the arrest warrant had been dropped, the arrest warrant actually was not dropped on that date. See Declaration of Appellant. That the arrest warrant was not actually dropped on that date is also evidenced by Appellant's motion to rescind the arrest warrant which occurred after 8/19/05 which the judge refused to allow.

The fact that the arrest warrant was not dropped on 8/19/05 is material to the case and that factual clarification can be added to an amended complaint and likely would have been included at some point in time as it would have likely come during briefing in the district court.
Appellant also asks that judicial notice be taken of the proceedings in Utah District Court case 2002cv00975 where the arrest warrant became an issue as to Appellant's ability to attend a pre-trial hearing. In Doc. 141 of that case the court is shown, with supporting declaration, that the state trial judge was contacted in November of 2005 and Appellant specifically asked if the arrest was in fact rescinded and Appellant was informed that it in fact was still in effect. See Doc. 141 (on p. 48), Declaration of Aaron Raiser at 2.

V. Conclusion

The complaint can be amended to cure many of the

deficiencies raised in the Opinion of this Court. Further, a proper analysis of the facts show the existence of a claim under §1983 and further factual and legal development should be allowed with respect to standing and the other claims in the case.

DATED July 28, 2007.

_____

Aaron Raiser

Declaration of Appellant (Attached to Petition for Rehearing)

I, Aaron Raiser, state the following under penalty of perjury:

I am the appellant in this appeal. In 1999 I entered into a contract (settlement agreement) with BYU allowing me to take 10 classes spring or summer term at BYU through 2009. Two of those classes have been taken, leaving 8 to take until 2009.

BYU currently is refusing to allow me to take further classes there at this point in time.

Based on the written contract, and what I believe is a breach of that contract, I believe I have an actionable claim in state court arising from that breach.

With respect to the turnover in judgeships in the Fourth District Court, Utah, the home district of BYU, in the last 5 years, 4 judges have been appointed by the governor to that judicial district.

Dated July 28, 2007

_____

Aaron Raiser

Appendix I – Opening Brief – Tenth Circuit
(Excerpts pertinent to case - to save space / cost etc.)

***

I. Nature of the Case
The case involves claims under RICO, §1983, §1985, separation of church and state under the First Amendment and common law Extortion.

II. Course of proceedings

On 3/28/2006 Appellant filed the Complaint. Doc. 1. A magistrate was assigned to review to see if it had merit on May 9, 2006. Doc. 12.

The magistrate issued the Report and Recommendation (R&R) dismissing the case sua sponte on 7/25/06. Doc. 15. Appellant filed an objection to the R&R on 08/22/2006 — Doc. 34, and an amended complaint on 8/15/06 Doc. 31.

Judge Campbell upheld the R&R and closed the case. See Doc. 39. Although Doc. 39 did not dismiss the complaint, Doc. 40 apparently rectified that problem via a docket notation.

Statement of the Key Facts

The judiciary of the state of Utah over the years has been systematically filled with LDS judges due to the LDS church being in the majority politically. Amended Complaint (AC) ¶¶ 180.

The religious composition in the state of Utah is

approximately 51-53% LDS. Id. Yet of the 12 judges serving in the state judicial district of Utah County where Appellant has litigated state cases against BYU, an LDS church institution, each (100%) of those 12 are all LDS. AC ¶¶ 169. Of the 7 members on the Utah Court of Appeals, all (100%) 7 are LDS. AC ¶¶ 148.

The LDS church however has very strong religious beliefs concerning the truthfulness of its religion. Its beliefs are that it is the Lord's only true church, guided and directed by the Lord himself. AC ¶¶ 182-184. LDS faithful are required to accept and stake their entire lives on that premise.

Important for this Petition, LDS faithful must also take a religious oath in their temples that they shall defend and promote the LDS church. AC ¶¶ 185-193.

BYU, a LDS religious institution, is taught as church doctrine to be the Lord' s University. AC | 202.

These beliefs create a conflict for the LDS judges when either the LDS church or one of its affiliates such as BYU is a litigant to a court case. AC | 215.

Appellant has been injured as the state judges hearing his cases have been inordinately biased in favor of BYU based on their religious affiliation. AC ¶¶ 195-200.

FN1 those beliefs or challenging their correctness. These are pointed out as they are material to the outcome of the case.

For example, in state case 020403619 BYU removed a state case to federal court where no federal cause of action

existed. That wrongful use of the removal procedure caused an entire 1 year delay in the state case as it was not remanded to state court until 1 year later. This was oof no fault bf the Appellant as he filed the proper motion to remand in federal court right after removal was denied about 2 weeks after it was removed, Petitioner even calling the federal court chief judge's chambers assigned to hear the case repeatedly to remand it, but the chief (who is also LDS) failed, for no explained reason, to remand for 1 year. AC ¶¶ 19-46.

Upon remand, the state court judge, however improper, used his discretion to deny any further amendment to the complaint because after 1 year amendment would not be allowed. However, Petitioner could not amend the complaint due to the case being stayed in federal court per the improper removal. Further, a delay in obtaining critical witness testimony was denied, where witnesses either forget, or move etc. making prosecution of the case difficult.

The the federal judge ruling against removal stated in the Order denying removal that BYU's removal violated 28 U.S.C. §1446 because no federal cause of action was present in the state court case. See Appendix G -District Court Order Denying Removal.

Appellant considered the removal a violation of 28 U.S.C. §1446 and was injured by a one year delay in the state case so Appellant filed a motion for sanctions in state court. Instead of imposing sanction or so much as a reprimand of BYU, the state judge fined Appellant $2751 for filing the motions saying it had no merit, Thus BYU violated 28 U.S.C. §1446, caused a 1 year delay in the state court case, allowing them to win that case, the federal courts held BYU

violated 28 U.S.C. §1446, yet the state court judge sanctioned Petitioner simply for filing a motion for sanctions regarding the misconduct of BYU.

BYU then later found out at a federal hearing that Appellant, a resident of California, was homeless and barely had enough money to survive from day 1 to day. AC ¶¶ 55-57. With that information BYU then applied, in an ex parte proceeding to a state court judge, for an Order requiring Appellant to travel from California to Utah to attend a state court hearing, and BYU requested that if Appellant failed to attend the hearing, he would face arrest. AC ¶¶ 58-59. BYU purposefully withheld from the judge in the ex parte proceeding that Appellant was unable to travel to Utah for the hearing and did so with the intent and purpose of interfering with Appellants ability to travel to Utah and attend his court hearing, obtain witness testimony such as depositions against BYU. AC ¶¶ 83-85.

BYU also mislead the state trial judge and cited as authority Utah R. Civ. Proc. 69 in the motion leading to the arrest, where Utah R. Civ. Proc. 69 . does not exist. AC ¶¶ 70—71. In the ex parte proceeding BYU also had an affirmative duty to inform the trial judge that Appellant did not have the means to attend the hearing. AC ¶¶ 72.

Appellant did not attend due to his poverty and the hearing and the arrest warrant was issued. AC ¶¶ 79. `
With that threat of arrest, BYU attempted to coerce Appellant into dropping his cases against BYU in exchange for them dropping the arrest warrant which warrant threatened Appellant with the use of physical force.
AC ¶¶ 73-74.

With that arrest warrant, Appellant was hindered, and otherwise unable to travel to Utah to (1) attend any legal proceedings in which he was involved, (2) obtain witness information (3) give testimony in any legal proceedings in Utah or (4) to appear as a witness in federal and state U proceedings or hearings or obtain other evidence needed for those proceedings. AC ¶¶ 85.

Prior to obtaining the arrest warrant in violation of Utah Rules of Professionsl Conduct 3.3 and fraud upon the state court, the defendants in the case Kono, Steele and BYU conspired together, and then took acis to further that conspiracy to violate Appellants rights to access to the federal court system in Utah, to obtain witness testimony, and to give testimony in the federal and state cases against BYU. AC ¶¶ 116, 237.

The state court judge was aware that Utah R. Civ. Proc. 69 does not exist and provided no authority for the arrest warrant. AC | 80. The state court judge was also aware that Appellant was homeless and near penniless. AC ¶¶ 97-99. See also AC | 321. Appellant has filed many motions to rescind the state arrest warrant order but the state court judge has denied each. AC ¶¶ 105,106.

The state court judge (Defendant Howard) also sanctioned Appellant when he filed a URCP Rule 11 (which mirrors the FRCP) motion against BYU saying it was meritless regarding Appellant's complaint regarding the manner BYU obtained the arrest warrant ex parte without telling the judge Appellant could not financially afford to attend the hearing where BYU was fully aware of that fact, and the natural consequences of that in them getting the arrest warrant. The total monetary sanctions imposed

were $4748. AC | 323.

The arrest warrant for Appellant remains in effect. AC ¶¶ 105. While not specifically mentioned, it would be likely be rescinded upon payment to BYU of the $4748 which might be some time given Petitioner being homeless and under some financial difficulty.

Other instances of procedural and substantive prejudice in favor of BYU by the Utah state courts are also alleged. AC ¶¶ 153-162; 144-147.

With respect to the factual allegations regarding the religious composition of the Utah Judiciary and the resulting injury to Appellant's ability to get a fair hearing against BYU and due process of law rights, a claim for Separation of Church and State under the First Amendment is claimed. AC at 24-25. The relief sought with respect to Governor Huntsman who is in charge of selecting the judicial nominating members who make binding recommendations for filling state judgeships, is that steps be taken to ensure that the state judiciary more closely reflects the religious composition in Utah. AC at 29.

A claim against Judge Howard is brought regarding the same separation of church state claim along with a § 1983 claims to rescind the arrest warrant and the $4748 sanctions. AC at 28, 29 (Eighth, Ninth Claim). The unlawful arrest warrant also interferres and burdens Petitioner's right to interstate travel as he can no longer travel to or through that state without facing arrest.

The appeal to the Utah Appelleals and Supreme Courts to have the arrest warrant and $4748 sanctions rescinded was denied and a Petition for Writ of Certiorari to the Utah

Supreme Court on the matter was denied in 07-442 on Dec. 3, 2007 by this Court, leaving only the federal courts to redress the wrong done to Petitioner on the matter.

Declaratory relief is also sought. Id. (Seventh, Eighth Claim) Because the actions of Defendants Kono, Steele and BYU deprived, obstructed and/or hindered Appellant to rights to interstate travel, the ability to prosecute and attend his state and federal court cases, obtain evidence, obtain witness testimony, give his testimony in those cases and interfered with Appellants due process of law rights, and because those actions were done under color of state law, a cause of action under §1983 is alleged, M {
along with a Cause of Action under RICO for interfering with witness and evidence taking in a federal court case, a related claim under §1985 for the conspiracy? which preceded, and was part of, the deprivation of those rights and interference with and hindering Appellant's rights to attend federal court hearings, and his ability to obtain witness and related evidence in federal court cases are alleged. AC at 19-27.

1 Summary of The Argument
With respect to the §1983 Claims, each of the private defendants are state actors and have otherwise met the elements for a §1983 cause of action. Because the elements of the RICO and §1985 claims are met, A defendants Kono, Steele, and BYU can not be dismissed as defendants for these causes of action. Judge Howard is not immune to suit under §1983 as the Supreme Court has ruled that judges are not immune to suit under §1983 for non-monetary relief. Rooker-Feldman poses no bar to any cause of action because the complaint was filed prior to any final state order entered. ,The Eleventh Amendment does not bar suit against Governor Huntsman for prospective non—

monetary relief.

Abuse of discretion is evident by the way in which the lower court judge handled the case such as overriding the chief judge's orders in the case and deciding the recusal motions in contravention to 28 U.S.C. §455.

The case should therefore be allowed to proceed in the lower court or an opportunity to amend to remedy any defects allowed if necessary.

I.
All Elements of §1983 Satisfied For Claims
, Against The Private Defendants
42 U. S.C. §1983 states in pertinent part:
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . ..

A. Defendant's Are State Actors Under §19S3
The lower court gave as reason for dismissal of the §1983 claim against Kono, Steele and BYU that they were not state actors under §1983. See Doc. 15,at 15. ("[a]lthough Plaintiff makes the conclusory assertion that these private defendants were acting under color of state law, Plaintiff has not set forth any facts supporting that assertion. As a result, Plaintiff has not set forth a Section 1983 claim.")
3 Arguments, where possible, were raised in the lower court. The Amended Complaint was dismissed

without any opportunity to respond to the reasons for dismissal. A Response to the R&R was tiled but that was based on the Qriginal Complaint which was deemed moot.

I. §l983 state actor issue raised Doc. 34 at 3-4; H. Rooker Felman Id. at 2-3; III. Eleventh Amendment Id. at ll; IV. Judicial Immunity Id. at 5-6. V. §l985 Id. at 6-8; VI. RICO Id. at 9-10;

The Supreme Court, addressing the issue of pleading requirements in Conley v. Gibson, 355 U.S. 41, 46 (1957), stated that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that V the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

To state a valid cause of action under § 1983, a plaintiff must allege the deprivation by defendant of a right, privilege, or immunity secured by the Constitution and laws of the United States while the defendant was acting under color of state law." Garcia v. Lemaster, 439 F.3d 1215, 1217 (10th Cir.2006).

Federal Rule of Civil Procedure 8(a)(2) provides that a complaint need only include "a short and plain statement of the claim showing that the pleader is entitled to relief. "Rule 8(a)`s simplified pleading standard applies to all civil actions, with limited exceptions." Swierkiewicz v. Sorema NA., 534 U.S. 506, 512-513, 122 S. Ct. 992, 998, 152 L. Ed. 2d 1 (2002).
Other provisions of the Rules are inextricably linked to Rule 8(a)'s simplified notice pleading standard. Rule 8(e)(1) states that: "[n]o technical forms of pleading or motions are required," and Rule 8(f) provides that:

"[a]ll pleadings shall be so construed as to do substantial justice."

If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding. Swierkiewicz, supra, 534 U.S. at 513-514, 122 S. Ct. at 998.

There is no "heightened pleading standard" in § 1983 cases. See, e.g., Leatherman v. Tarrant County, 507 U.S. 163, 168, 113 S. Ct. 1160,1163,122 L. Ed. 2d 517 (1993) (rejecting "heightened pleading standard" in § 1983 municipal liability cases as inconsistent with Rule 8(a)(2)). In evaluating a Rule 12(b)(6) motion, all_ of the allegations in the plaintiffs` complaint are accepted as true (Currier v. Doran, 242 F.3d 905, 911 (10th Cir. 2001)) and the complaint is viewed in the light most favorable to the non-moving party. See Peterson v. Jensen, 371 F.3d 1199, 1203 (10th Cir. 2004).

Here Appellant has adequately alleged the defendants were acting under color of state law. AC $[217. Further, Appellant has alleged facts sufficient to show that that these defendants were acting "in c0ncert" with a state actor (AC 230) and that '*state was a joint participant with the . Defendants" in the bringing about the 1983 deprivation. AC ¶231.

The facts show that the State actor was a state court judge with whomthey jointly and/or in concert participated with. AC ¶¶58-59, generally 58-85.

B. Case Law Supports Recovery Under §1983

As for the ability to act in concert with a state court judge

and be considered la state actor, case law adequately supports that premise. A recent 5th Circuit case similar in many ways to the instant appeal shows thatiprivate attorneys who act in concert with a state judge to bring about a deprivation of federal rights allows the private attorneys to held as state actors for §1983 purposes. A · In Ballard v. Wall, 413 F.3d 510 (5th Cir. 2005) the defendant Wall obtained a judgment against Ballard in state court. Wall then went to the state court judge and obtained a hearing date for a supplemental proceeding to collect the judgment. Ballard showed up 2 hours late for the hearing and was ordered to jail by the judge until bond had been posted or until the next hearing date. Ballard was then jailed until he posted bond. Ballard then brought suit against the judge and attomeys for Wall. While the judge received qualified immunity from suit, the 5th Circuit found that the private attorneys could be sued under §1983 because they acted in concert with the judge to bring about a deprivation of Ballard's A rights in confining him to jail until he posted bail.

For 1983 purposes, the 5th Circuit analyzed whether the private attorneys were state actors under the Lugm·4 test and found that the private attorneys could be held state actors. In the instant case, the first factor under Lugar is satisfied because Ballard proffers allegations that "a person for whom the State is responsible" caused the constitutional deprivation. Lugar, 457 U.S. at 937, 102 S.Ct. 2744. Ballard makes various assertions in his complaint which, if taken as true, indicate that Judge Lambert exceeded the scope of her jurisdiction and abused her authority by imprisoning him until he paid his debt. Ballard at 519.

In the instant appeal, the state judge is "a person for whom the State is responsible". Additionally, allegations that the

state judge exceeded their authority are present, or can be amended to include those allegations. For instance the judge relied on Utah R. Civ. Proc. 69 for the authority to hold the hearing and jail Appellant if he did not appear where that ruled does not exist.

The state judge (Howard) also was aware that BYU violated Utah Rules of Professional Conduct 3.3(d) in an ex parte proceeding and refused to rescind the bench warrant when finding out BYU intentionally withheld that Appellant could not afford to travel to Utah for the hearing, which guaranteed them the arrest warrant.
° Lugar v. Edmdndson Oil C0., 457 U.S. 922, 936, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982)

The judge also on becoming aware that Appellant could not afford to travel to the hearing, imposed on him conditions which he could not meet traveling to Utah where poverty prevented such travel — in violation of his Constitutional rights. For example, for the Appellee Howard to issue an order for Appellant to appear in;Utah where he is aware that Appellant can not afford to travel to the hearing, then to issue a warrant for his arrest, at least in a civil matter, is entirely improper.

In fact the judge after receiving a notarized affidavit that Appellant had no property in Utah and was nearly penniless, he still refused to rescind the arrest warrant. ~ Worse yet, the entire basis for the hearing was to enforce a judgment against Appellant in favor of BYU and that judgment was in every sense of the word ludicrous. Appellee Howard awarded BYU $2751 in sanctions after BYU improperly removed their state case to federal court, but the state case had no federal cause of action. That was a direct and open and obvious

violation of 28 U.S.C. §1441. Then Appellant hled the necessary motion to remand almost immediately, but the federal court, without explanation refused to remand it to state court for one year, until from out of nowhere they remanded it. Appellant complained to Appellee Howard about it and Howard imposed the $2751 sanction saying Appellant's motion for sanctions for improper removal was meritless.

The judge's improper conduct combined with BYU's misrepresentation and fraud on the court that Utah R. Civ. Proc. 69 provided the authority for their hearing motion, and BYU violating Utah Rules of Professional Conduct 3.3(d) in not informing the judge about Appellant's ' inability to travel to Utah for the hearing, which in essence allowed the judge to issue the order which would lead to the deprivation of Appellant's rights at issue in the case, should sufice to find state action on the part of the private defendants. As in Ballard the matter of state actorship and liability can almost be decided independent of whether the private actors violated any rules of professional conduct. What counts if that they violated a federal right and acted under color of state law.
Under the case law, "a creditor's invocation of a State's post-judgment collection procedures constitutes action 'under color of state law within the meaning of 42 U.S.C. § 1983, ...". Pennzail C0. v. Texaco, Inc., 481 U.S. 1, _ . _ 30, 107 S. Ct. 1519, 1536, 95 L. Ed. 2d 1 (1987) —
Thus the magistrate's comment of FN 3 of the R&R at 15 would thus be moot. Further, the Appellant is not bringing a claim against by defendant for violation of a professional rule of ethics. The cause of action is for violation of Appellants federal rights and each element of 1983 has been met independent of any rule of professional conduct.

However, the notion of the magistrate of FN 3 that 1983 liability can not be found for when violation of rules of ethics occurs is completely by the Tenth Circuit in Snell v. Tunnell, 920 F.2d 673 (1990), especially where an i ex parte proceeding is the mechanism as in this appeal. In Snell operators of a foster care home had their children removed ' from their custody via an ex parte proceeding initiated by a state social worker agency. The state agency violated Oklahoma Rules of Professional Conduct 3.3 (which mirror those of Utah) in presenting false information to the state court judge in the ex parte proceeding. Further, the Tenth Circuit noted the near certain violation of Oklahoma Rules of Professional Conduct 3.3(d) when the agency failed to make adequate disclosure to the state judge in the ex parte proceeding which generated the Order removing the foster children from the custody of Mr. & Mrs. Snell. See Snell at 694 FN20. . .

The Tenth Circuit found no bar to the Snell's §1983 suit resulting from the state agency happening to violate a professional rule of conduct in the process of their violation of Mr. & Mrs. Snell's rights.

Where §1983 has been violated, any Rules of Professional Conduct can not save the infringer from accountability for that violation. Also, under the federal preemption clause, the state rules of professional conduct can not preempt suit under the Constitution. Also, the outcome in Snell was independent of the validity of invalidity of the state judge Order removing the foster children from custody . V of Mr. & Mrs. Snell. Snell was dependent on the unlawful means by which the Order was obtained and resulting injury. This is pointed out because the R&R gave great deference to the state order and stating that

because it was issued by a judge it somehow removed liability from the defendants. That the Order happened to be issued and signed by a state judge was of no consequence in Snell and can neither be in this appeal.

II.
Rooker Felman Not a Bar to Suit

The magistrate in the R&R at 9-14 claims the Rooker Felman doctrine bars suit. The main weakness with that premise is found in the R&R at 13. ("It appears that the Rooker—Feldman doctrine applies in this case because, from what the court gathers from Plaintiff s complaint, presumably a final order had been issued in that case.") The lower court is not viewing the facts in alight most favorable to Appellant, assuming and presuming facts that are nowhere to be found in the complaint to gain dismissal. Appellant did amend the complaint and alleged "The referred to state case has not reached a final adjudication for Rooker-Feldman purposes." AC ¶51.

The Tenth Circuit recently revisited the scope of the Rooker-Feldman doctrine in Guttman v. Khalsa, 446 F.3d 1027 (10th Cir. 2006) which was on remand by the U.S. Supreme Court in light of Exxon Mobil Corp. v. Saudi Basic Industries Cmp, 544 U.S. 280 (2005). The Tenth Circuit found that based on Exxon that state court proceedings can be reviewed under §1983 in federal court where the state court proceeding is not final. In Guttman the state court proceeding was not final until the state supreme court had acted on Guttman's petition for writ of certiorari.

Guttman filed a petition for certiorari to the New Mexico Supreme Court, but on April 17, 2003, before the New

Mexico Supreme Court acted, he filed this claim . .. in federal district court, alleging violations of his procedural due process rights under §1983.
Guttman claims that the district court erred in dismissing the case for lack of subject matter jurisdiction under the Rooker-Feldman doctrine because he filed his federal complaint before his casein state court was final. Under Exxon Mobil, the Rooker-Feldman doctrine only applies to cases brought "after the state proceedings have ended." 125 S.Ct. at 1526. State proceedings had not ended when Guttman filed his federal court claim. As such, the Rooker-Feldman doctrine does not apply and the district court did have subject matter jurisdiction.

See Guttman at 1030-31.

Because Appellant in the instant action filed his §1983 claims in federal court prior to the state court proceedings being final, the Rooker-Feldman presents no bar to any of those claims.

III.
The Eleventh Amendment does not bar suit against Governor Huntsman for prospective non-monetary relief. The R&R alleges Governor Huntsman is not a person for §1983 purposes and therefore dismissal proper. See R&R at 25 citing to Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989).

The plaintiff in Will was suing for monetary relief. Plaintiff in the instant action seeks only non-monetary prospective relief. Will recognized that when suing for non-monetary prospective relief, a governor etc. is a person under 1983. Of course a state official in his or her official capacity, when sued for injunctive relief, would be a person under

1983 because "official—capacity actions for prospective relief are not treated as actions against the State." Kentucky v. Graham, 473 U.S., at 167 , n. 14; Ex parte Young, 209 U.S. 123, 159 -160 (1908). See Will v. Michigan Department ofState Police, 491 U.S. 58, 69 FNIO (1989).

Because the Eleventh Amendment does not bar suit under 1983 against state officials sued in their official capacity for prospective non-monetary relief, the claim against Govemor Huntsman should be allowed to continue.

IV.
Judge Howard Not Immune To Suit Under §1983;

Constitutionality of the Arrest Warrant A. Judge Howard Not Immune To Suit Under §1983 According to the R&R at 15 "Judge Howard enjoys absolute judicial immunity from Plaintiff' s claim.". The R&R at 15 relies on Stump v. Sparkman, 435 U.S. 349, 355-56, 356-57 (1978). However the R&R fails to cite Pulliam v. Allen, 466 U.S. 522 (1984) which was decided after Stump. Pulliam clariiied that judicial immunity applies under 1983 only where the judge is being sued for monetary A damages. See Pulliam at 540-542.

A few cites from Pulliam are instructive:
As illustrated above, there is little support in the cormnon law for a mle of judicial immunity that prevents injunctive relief against a judge. There is even less support for a conclusion that Congress intended to limit the injunctive relief available under § 1983 in a way » that would prevent federal injunctive relief against a state judge. Ln Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967), the Court found no indication of affirmative congressional

intent to insulate judges from the reach of the remedy Congress provided in § 1983. See Pulliam at 540.

We conclude that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity. See Id. at 541-542.
Congress enacted § 1983 and its predecessor, § 2 of the Civil Rights Act of 1866, 14 Stat. 27, to provide an independent avenue for protection of federal constitutional rights. The remedy was considered necessary because "state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights." Mitchum v. Foster, 407 U.S. 225, 240, 92 S.Ct. 2151, 2161, 32 L.Ed.2d 705 (1972). See also Pierson v. Ray, 386 U.S., at 558-564, 87 S.Ct., at 1219-1222 (dissenting opinion) (every Member of Congress who spoke to the issue assumed that judges would be liable under § 1983). A Subsequent interpretations of the Civil Rights Acts by this Court acknowledge Congress' intent to reach unconstitutional actions by all state actors, including judges. Ex parte Virginia, 100 U.S. 339, 25 L.Ed. 676 (1880), § 4 of the Civil Rights Act of 1875, 18 Stat. 336, was employed to authorize a criminal indictment against a judge for excluding persons from jury service on account of their race. The Court reasoned that the Fourteenth Amendment prohibits a State from denying any person within its jurisdiction the equal protection of the laws. Since a State acts only by its legislative, executive, or judicial authorities, the constitutional provision must be addressed to those authorities, including the State's judges. Section 4 was an exercise of Congress' authority to enforce the provisions of the Fourteenth Amendment and, like the

Amendment, reached unconstitutional state judicial action. See Id. at 541.

Appellant is seeking prospective non-monetary relief against defendant Howard and that relief can not be barred by judicial immunity.

In addition to the FIFTH CLAIM FOR RELIEF, AC at 24, Appellant has included a SEVENTH, EIGHT and NINTH Claim For Relief AC at 26-28 brought under § 1983 for the same facts as alleged in the Fifth Claim alleging recovery based on due process of law and equal protection grounds. One or more of these claims should be permitted if recovery against Judge Howard is denied in the Fifth Claim for Relief.

Sufficient facts are alleged that the Judge Howard has failed the Equal Protection of Laws clause of the 14th Amendment in issuing an arrest warrant and keeping it in force where Appellant was unable to comply with the Order — to travel to Utah for a hearing - based on his poverty. If that is not evident from the complaint it can be amended to alleged that. Certainly that a person can be excluded from a state or if they travel to or through that that state they can be arrested because they could not afford to travel to Utah for a hearing which was improperly convened, denies equal protection of "law to a class of persons who are poor, or in the alternative, Appellant can be seen as being treated as a "class of one". Sufficient facts are alleged that due process of law is lacking the i manner in which the arrest warrant was issued and maintained. Certainly where Appellee Judge Howard became aware that Appellant would not afford to travel to Utah due to his acute poverty and later when he received a notarized affidavit that Appellant had no property in Utah,

Judge Howard should have realized the impropriety of the Order and his lack of jurisdiction. Perhaps the claims can be reworked or can be better argued, for proposes of dismissal under Rule 12(b)(6) it should not be dismissed.

B. Constitutionality of the Arrest Warrant
Appellant is also seeking declaratory judgment that the process by which Appellant has been deprived of his rights to attend to his legal proceedings in Utah and accompanying injury is unconstitutional. AC at 29.
l "Time and again, the Supreme Court has made clear that 'some form of hearing is required before an individual. is finally deprived` " of any significant protected interest. Lawrence v. Reed, 406 F.3d 1224,1233 (10th . Cir. 2005) (holding that police chief faced liability for impounding vehicles under an ordinance which was clearly unconstitutional for failure to provide for a hearing; the officer was chargeable with knowledge that the ordinance was unconstitutional), quoting Mathews v. Eldridge, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). See, e.g., Cleveland Board 0fEducnti0n v. Ieoudermill, 470 U.S. 532, 542, 105 S. Ct. 1487, 1493, 84 L. Ed. 2d 494 (1985) (the root requirement of the Due Process Clause is that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest; hearing required before termination of employment);

In the area of creditor-debtor conflict, the United States Supreme Court has established a strong line of cases holding that the constitutional requirements of due process apply whenever officers of the state act jointly with a creditor in securing the property in dispute. See, e.g., Sniadach v. Family Finance Corp., 395 U.S. 337, S9 S. Ct. 1820, 23 L. Ed. 2D 349 (1969); Fuentes v. Shevin, 407 U.S.

67, 92 S. Ct. 1983, 32 L. Ed. 2D 556 (1972) (§ 1983 action brought against both a private creditor and state attorney general; prejudgment replevin statutes violated Due Process Clause for failure to provide a hearing before the chattels were taken); Lugar v. Edmondson Oil Company, Inc., 457 U.S. 922, 932-933, 940- 941, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982).

The need for the due process protections discussed in these cases is substantially stronger when the debtor's liberty, rather than property, is at stake. See Bearden v. Georgia, 461 U.S. 660,672-673, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983) (imprisonment for failure to pay restitution and fine violates the Fourteenth Amendment absent inguig into the reasons for the failure to pay, a finding of willful refusal to pay, or that alternative forms of punishment are not adequate).

A case on point is Desmond v. Hachey, 315 F. Supp. 328, 332 (D.Maine 1970) (three—judge court). In Desmond., the coun stated: "A defendant who is deprived of his liberty by civil process is as much entitled to due process of law as a defendant who is deprived of his liberty because he is charged with a crime." Ibid.

The three-judge court in Desmond held that the Maine debtor disclosure law, which permits the arrest and incarceration, without a hearing, of a judgment debtor who has failed to obey a subpoena for his appearance and examination at a disclosure hearing, violates due process, despite provisions assuring that the jailed debtor would get a hearing within from two to ten days after imprisonment. Desmond, 315 F. Supp. at 331-333. The court stated: Only a procedure which provides an opportunity for the debtor to explain, prior to incarceration, why he failed to obey the subpoena can adequately meet the

constitutional imperative. Due process normally requires a hearing and an opportunity to present a defense before incarceration, and the fact that there is a subsequent procedure by { which the debtor may obtain his release does not change the result. See Desmond, 315 F. Supp. At 333. Under Desmond and the cases cited herein, the manner in which Appellant has had an arrest warrant issued which now excludes him from Utah and severely impeding his access to the state and federal court system in Umh violates the Due Process Clause because it fails to afford a hearing for a judgment debtor to explain, prior to incarceration, why he did not appear in rqsponse to the Order to appear for the hearing BYU sought ex parte. In fact these procedural safeguards are imperative where such an Order to attend a hearing is sought ex parte.

V.

42 U.S.C. §19S5 '

A. 42 U.S.C. §1985 provides:

If (1) two or more persons in any State or Territory (2) conspire to deter, by (3) force, intimidation, or threat, (4) any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or (5) to injure such party or witness in his person or property on account of his having so attended or testified, or (6) to influence the verdict, prescntment, or indictment or any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or (7) if two or more persons (8) conspire (9) for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, (10) with intent to deny to

any citizen the equal protection of the laws, or (11) to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws . . . the party so injured or deprived may have an action for the recovery or damages occasioned by such injury or deprivation, against any one or more of the conspirators. (numbering added)
See 42 U.S.C. 19S5(2).

1. The necessary elements are satisfied by the facts of the complaint. Appellant asks the court to examine the seriousness of the misconduct of the defendants The Amended Complaint adequately alleges that (1) two or more of the defendant's [AC at ¶¶86, 88, 116] (2) conspired [Id.] (3) by force, intimidation, or threat [AC at ¶¶69, 87] (4) any party or witness in any court of the United States from attending such court, or from testifying to l any matter pending therein, freely, fully, and truthfully [Appellant is in fact a party to the federal and state court cases; see also AC at ¶¶69, 87, ¶123 which shows that as a result of the illegally obtained arrest warrant he could not give his testimony in his deposition, or depose other witnesses and otherwise attend any hearing within the state of Utah]. Thus each of the elements are satisfied for recovery under §1985. That Appellant was threatened goes without saying. Was there a threat? Yes there was. If Appellant had gone to Utah for any court related proceeding he was under the threat of arrest. That is a threat. Simply because they did not openly verbally make the threat does not matter. The · · threat was real and the threat was understood and the defendants were aware that the threat would be understood by Appellant and force him to forego his court related proceedings in Utah as a result. However, additional elements are also satisfied.

2. or (6) to influence the verdict [the actions of forcing Appellant to forego depositions and obtain the evidence needed to win his case would in fact influence the verdict the civil case against them]
3. (7) if two or more persons (8) conspire (9) for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, [Utah is a State, the purpose of defendants conspiring together to obtain the unlawful arrest warrant was for the purpose of impeding, hindering or defeating Appellant in his court cases against defendants; see AC ¶¶85, 119, 254,117, ¶[123 (10) with intent to deny to any citizen the equal protection of the laws [see AC ¶¶85, 119, 254,117],

4. or (11) to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws [to put someone in jail based on an unlawful arrest warrant is an injury, further it uses physical force and it doesn't matter whether it is the defendants who use the force or if they unlawfully persuade another to do it for them, it is still an unlawful injury].

There are then four (4) separate basis which are satisfied for recovery under 1985 and that is significant.
Simply because the conspiracy ended up with a judge issuing an, unlawful Order obtained through fraud does not provide a defense to any of the elements of §1985.

VI.
RICO
A. 18 U.S.C. §1503 is applicable.
The R&R alleges that §1503 is inapplicable (R&R at 22) because Appellant is not a juror, or officer of the court.

§1503 provides:
(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving ..., or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b). [emphasis added]

Appellant does not have to be serving as a juror or magistrate etc. As the underlined text indicates, if defendants "corn1ptly or by threats or force. .. influences, obstructs or impedes or endeavors to influence the due administration of justice" Did defendants corruptly or by threats or force influence, obstruct, or impede or endeavor to do so? It is a resounding yg that they did. There conduct as alleged is in fact corrupt under the common definition5 of the The definition, one of many, all of which are similar for the word "corrupt" states:

corrupt Pronunciation: ks- · rsp: Function: aeyective : having an unlawful or evil motive; especially : characterized by improper and usually unlawful conduct intended to secure a benefit for oneself or another (as by taking or giving bribes) —cor·r·upt·ly adjective —(:0l`·l'11pt·11€SS noun Source: Merriam-Webster's Dictionary of Law, © 1996 Merriam-Webster, Inc. See http:lldictionary.reference.com/browse/corrupt word. (Corrupt is not limited to taking of money etc. and can include all conduct with unlawful motive). They did in fact,

by their corruptly obtaining of the arrest warrant influence and obstruct and impede Appellant from fully participating in, and prosecuting his federal and court cases. However, Congress uses the disjunctive "or" when drafting §1503. So after the word "corruptly" comes the word "or", and then Congress states that if by "threats" or "force" "influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice" shall be liable under 1503. Certainly the hreg of arrest, which was certain given a bench warrant, when Appellant traveled to Utah for a court proceeding can be considered a threat under 1503.

Whether liability if found due to the corrupt manner in which the arrest warrant was obtained or otherwise, the elements are satisfied for liability under 1503, or at least discovery or the opportrmity to amend the complaint is merited. To understand the profound and `material effect the unlawfully obtained arrest warrant has had on Appellant's federal court proceedings with BYU, Appellant asks for judicial notice to be taken of District Court of Utah 2:0O2cv00975, specifically Docket entries 97, 103, 114-118. (Docket A sheet is at Appendix B). These events transpired recently in Dec. 2006.

The main docket entry of interest is 118 where the case `s to be dismissed for Appellant's failure to appear at a pre-trial scheduling conference. Appellant notified the court he could not come to Utah due to the arrest warrant out for him_ obtained by BYU (105,106, 108, 109, 116) (Declaration for Doc. 116 is found in Appendix C) and would have liked to appear by phone to simplify matters. The judge required Appellant, a California citizen, to travel in person to be in Utah for the scheduling conference. Appellant could not attend due to the arrest warrant (or

threat of arrest) and now the case is slated for dismissal as a result. This impeding or hindering of Appellant's ability to attend his court proceedings in Utah is directly attributable to the act of the defendants.
What they have done is serious — and is proscribed by law. Each element is fully satisfied.

VII.
Procedural Mistakes
A. Trial Judge Can Not Act On The Recusal Motions
Another procedural matter needing to be addressed is whether the magistrate or the judge should rule on a motion to recuse the magistrate. §455 states that the magistrate should "disqualify himself" if their impartiality could reasonably be questioned. 28 U.S.C. §455 states in pertinent part:
(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

The wording of §455 indicates that to "disqualify himself" the magistrate would need to be the one making the decision.That would logically make sense the magistrate would be in the best A position to be aware of any personal or extra-judicial biases they may have.

The magistrate, in this instance, would be in the best positionto evaluate the motion of recusal as he is the best person to be aware of his religious beliefs and whether those beliefs create a conflict or compromise his impartiality.

Because facts and law can be viewed in varying ways and impartiality is imperative for the success of our judicial system, the magistrate should have been given the

opportunity to review the motion himself and make the determination as to whether recusal was proper as that is what §455 intends.

VIII.
Conclusion
Dismissal of the Complaint sua sponte or under FRCP 12(b)(6) is inappropriate at this stage as the Amended Complaint states a claim upon which relief can be allowed against each of the defendants. The Eleventh Amendment does not bar suit against Governor Huntsman as he is being sued in his official capacity for prospective non- monetary relief.
Sufficient facts are found to support the allegation that the private parties were acting under color of state law for 1983 purposes because they were acting in concert or as joint participants with a state actor and is "a person for whom the State is responsible".
Rooker-Feldman is not a bar to any cause of action as the §1983 suit was tiled prior to a final decision in state court and Rooker-Feldman only bars suit where there is a final state court decision.
Judge Howard is not immune for suit under §1983 because he is being sued for non—monetary relief and Supreme Court case law states that a judge is only immune from §1983 suit where monetary relief is sought. For the remainder of the claims each of the elements for causes of action under RICO and §1985 and §1983 are otherwise met and the case should be allowed to proceed in District Court. If any deficiencies are found in the pleadings, opportunity to amend should be allowed.

Respectfully Submitted,
DATED January 2, 2007

Appendix J – Full Citation to Authorities

CONSTITUTIONAL PROVISIONS

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

RULES

Federal Rule of Civil Procedure 15(a)(2)

(a) Amendments Before Trial.
(2) Other Amendments.

In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Utah Rule of Professional Conduct 3.3(d)

In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

STATUTES

18 U.S.C. § 1503

(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate

judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b). If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

28 U.S.C. 455

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

42 U.S.C. 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the

deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. 1985

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the

right of any person, or class of persons, to the equal protection of the laws;